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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[NRC–2008–0664]

RIN 3150–AI54

Variable Annual Fee Structure for Small Modular Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its licensing, inspection, and annual fee regulations to establish a variable annual fee structure for light-water small modular reactors (SMR). Under the variable annual fee structure, an SMR's annual fee would be calculated as a function of its licensed thermal power rating. This fee methodology complies with the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA–90).

DATES: This final rule is effective June 23, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0664 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0664. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in Section XIV, "Availability of Documents," of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Michele Kaplan, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–5256, email: *Michele.Kaplan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

The U.S. Nuclear Regulatory Commission (NRC) anticipates that it will soon receive license applications for light-water small modular reactors (SMR). In fiscal year 2008, the NRC staff determined that the annual fee structure for part 171 of title 10 of the *Code of Federal Regulations* fees, which was established in 1995, should be reevaluated to address potential inequities for future SMRs, due to their anticipated design characteristics. These characteristics include modular design, factory component fabrication, and thermal power capacities of 1,000 megawatts thermal or less per module. These SMRs may also include safety and security design features that could ultimately result in a lower regulatory oversight burden for this type of reactor. Despite these significant differences, an SMR would be required to pay the same annual fee as a current operating reactor under the NRC's current fee structure. The Omnibus Budget Reconciliation Act of 1990, as amended (OBRA–90) instructs the NRC to "establish, by rule, a schedule of charges fairly and equitably allocating" various generic agency regulatory costs "among licensees" and, "[t]o the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees." Because of the significant anticipated differences between SMRs and the existing reactor fleet, applying the current fee structure to SMRs could be contrary to OBRA–90's requirement that the NRC's fees be "fairly and equitably" allocated among its licensees. Therefore, the NRC is implementing a variable annual fee structure for SMR licensees that would include a minimum fee, a variable fee, and a maximum fee based on an SMR site's cumulative licensed thermal power rating.

The NRC prepared a regulatory analysis for this final rule (see Section XIV, "Availability of Documents").

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I. Background

A. Operating Reactor Annual Fee Structure

Over the past 40 years, the U.S. Nuclear Regulatory Commission (NRC) has assessed, and continues to assess, fees to applicants and licensees to recover the cost of its regulatory program. The NRC's fee regulations are governed by two laws: (1) The Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701); and (2) the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA–90) (42 U.S.C. 2214). Under the OBRA–90 framework, the NRC must recover approximately 90 percent of its annual budget authority through fees, not including amounts appropriated for waste incidental to reprocessing activities, amounts appropriated for generic homeland security activities, amounts appropriated from the Nuclear Waste Fund, and amounts appropriated for Inspector General services for the Defense Nuclear Facilities Safety Board.

The NRC assesses two types of fees to meet OBRA–90's requirements. First, the NRC assesses licensing and inspection fees under the IOAA to recover the NRC's cost of providing specific benefits to identifiable applicants and licensees—these fees are in part 170 of Title 10 of the *Code of Federal Regulations* (10 CFR). The NRC also assesses annual fees to recover any generic regulatory costs that are not otherwise recovered through 10 CFR part 170 fees during the fiscal year—these annual fees are in 10 CFR part 171.

The current annual fee structure in 10 CFR part 171 would require SMRs to pay the same annual fee as those paid by the operating reactor fee class. For the operating reactor fee class, the NRC allocates 10 CFR part 171 annual fees equally among the operating power reactor licensees to recover those budgetary resources expended for rulemaking and other generic activities that benefit the entire fee class. If 10 CFR part 171, in its current form, is applied to SMRs, then each SMR reactor would pay the same flat annual fee as an existing operating reactor, even though SMRs are expected to be considerably smaller in size and may utilize designs that could reduce the NRC's regulatory costs per reactor.

Additionally, the current annual fee structure would assess multimodule nuclear plant annual fees on a per-licensed-module basis (rather than a site basis). For example, an SMR site with 12 licensed SMR modules (each with low thermal power ratings) would have to pay 12 times the annual fee paid by a single large operating reactor, even if that single reactor had higher thermal power rating than the cumulative power rating of the 12 SMR modules. This disparity raises fairness and equity concerns under OBRA–90. The SMR licensees could apply for fee exemptions to lower their annual fees. However, fee exemption are appropriate only for unanticipated or rare situations. The OBRA–90 statute requires the NRC to establish, by rule, a schedule of charges fairly and equitably allocating annual fees among its licensees. If the NRC anticipates up front that its annual fee schedule will not be fair and equitable as applied to a particular class of licensees, then amending the fee schedule, rather than planning to rely on the exemption process, is the better course of action for complying with OBRA–90.

B. Advance Notice of Proposed Rulemaking Regarding an Annual Fee Structure for SMRs

To address potential inequities, the NRC re-evaluated its annual fee structure as it relates to SMRs. In March 2009, the NRC published an Advance Notice of Proposed Rulemaking (ANPR) (74 FR 12735) for a variable annual fee structure for power reactors in the **Federal Register**. Although the ANPR nominally addressed the fee methodology used for all power reactors, its principal focus was on how to best adapt the existing fee methodology for future SMRs.

The NRC received 16 public comments on the ANPR from licensees, industry groups, and private individuals. These comments provided a wide range of input for agency consideration. Nine commenters supported adjusting the current power reactor annual fee methodology for small and medium-sized power reactors by some means. These commenters suggested basing the annual fee on either: (1) A risk matrix, (2) the thermal power ratings (in megawatts thermal, MWt), (3) the cost of providing regulatory service, or (4) an amount proportional to the size of the system based on megawatt (MW) ratings compared to a fixed baseline. Three commenters, representing small reactor design vendors, supported a variable fee rate structure as a means to mitigate the impacts of the existing fee structure on potential customers of their small reactor designs.

Commenters who did not support a variable annual fee structure recommended the following changes to the fee methodology: (1) Reinstatement of reactor size as a factor in evaluating fee exemption requests under 10 CFR 171.11(c), (2) establishment of power reactor subclasses, or (3) performance of additional analysis before making any changes to the current fee structure. Two commenters expressed an unwillingness to subsidize operating SMRs at the expense of their own businesses and believed that the flat-rate methodology provided regulatory certainty and assisted the ability to make ongoing financial plans.

In September 2009, the NRC staff submitted SECY–09–0137, "Next Steps for Advance Notice of Proposed Rulemaking on Variable Annual Fee Structure for Power Reactors," (ML092660166) to the Commission for a notation vote. The paper summarized the comments that the NRC received in response to the ANPR, and it requested Commission approval to form a working group to analyze the commenters' suggested methodologies. The Commission approved the NRC staff's recommendation in the October 13, 2009, Staff Requirements Memorandum (SRM) for SECY–09–0137. (ML092861070)

C. Evaluation of Four Alternative Annual Fee Structures for SMRs

The NRC subsequently formed a working group to analyze the ANPR comments (ML14307A812), as well as position papers submitted to the NRC from the Nuclear Energy Institute (NEI), "NRC Annual Fee Assessment for Small Reactors," (ML103070148) dated October 2010; and from the American Nuclear Society (ANS), "Interim Report of the American Nuclear Society President's Special Committee on Small and Medium Sized Reactor (SMR) Generic Licensing Issues," (ML110040946) dated July 2010.

Four possible alternatives emerged from the working group's analysis of the public comments and the two position papers:

1. Continue the existing annual fee structure, but define a modular site of up to 12 reactors or 4,000 megawatts thermal (MWt) licensed power rating as a single unit for annual fee purposes.
2. Create fee classes for groups of reactor licensees and distribute the annual fee costs attributed to each fee class equally among the licensees in that class.
3. Calculate the annual fee for each licensed power reactor as a function of potential risk to public health and safety using a risk matrix.
4. Calculate the annual fee for each licensed power reactor as a function of its licensed thermal power rating.

The NRC staff further concluded that Alternative 3, which calculated the annual fee for each SMR as a function of its potential risk to public health and safety using a risk matrix, did not warrant further consideration and analysis because of the technical complexities and potential costs of developing the probalistic risk assessments necessary to implement this alternative.

D. Preferred Approach for an Annual Fee Structure for SMRs

The working group examined the alternatives and informed the NRC's Chief Financial Officer (CFO) that Alternative 4 was the working group's preferred recommendation because it allows SMRs to be assessed specific fee amounts based on their licensed thermal power ratings (measured in MWt) on a variable scale with a minimum fee and a maximum fee. Additionally, the variable portion of the fee allows for multiple licensed SMR reactors on a single site up to 4,000 MWt to be treated as a single reactor for fee purposes. The working group determined that these attributes best aligned with OBRA–90's fairness and equity requirements.

The CFO submitted the final recommendations to the Commission in an informational memorandum dated February 7, 2011, "Resolution of Issue Regarding Variable Annual Fee Structure for Small and Medium-Sized Nuclear Power Reactors." (ML110380251) The memorandum described the results of the working group's efforts and its recommendation that the annual fee structure for SMRs be calculated for each newly licensed power reactor as a function of its licensed thermal power rating. The memorandum indicated that the NRC staff intended to obtain Commission approval for the planned approach during the process for developing the proposed rule.

In fiscal year (FY) 2014, the NRC staff reviewed the analysis and recommendations in the 2011 memorandum and determined that they remained sound. However, the working group identified one additional area for consideration related to the maximum thermal power rating eligible for a single annual fee.

In the FY 2011 memorandum, the CFO proposed an upper threshold of 4,000 MWt for multi-module power plants to be allocated a single annual fee. This value was comparable to the largest operating reactor units at the time (Palo Verde Nuclear Generating Station, Units 1, 2, and 3 at 3,990 MWt each). A subsequent power uprate was approved by the NRC for Grand Gulf Nuclear Station, Unit 1, which raised the maximum licensed thermal power rating to 4,408 MWt. Therefore, the 2014 working group recommended setting the single-fee threshold for a multi-module nuclear plant at 4,500 MWt on the SMR variable annual fee structure scale so that the maximum fee remains aligned with the largest licensed power reactor.

With this change, the NRC staff submitted final recommendations to the Commission and requested approval to proceed with a proposed rulemaking for an SMR annual fee structure in SECY–15–0044, dated March 27, 2015, "Proposed Variable Annual Fee Structure for Small Modular Reactors." (ML15051A092) The Commission approved the NRC staff's request to proceed with a proposed rulemaking on May 15, 2015, Staff Requirements Memorandum—SECY–15–0044, "Proposed Variable Annual Fee Structure for Small Modular Reactors." (ML15135A427)

Separately, under Project Aim, the agency is working to improve the transparency of its fees development and invoicing processes and to improve the timeliness of NRC communications on fee changes. More information about this effort can be found in the **Federal Register** (81 FR 15352; March 22, 2016).

II. Discussion

The NRC is creating a variable annual fee structure for SMRs. As detailed in the regulatory analysis, the NRC determined the current annual fee structure may not be fair and equitable for assessing fees to SMRs based on the unique size and characteristics of SMRs. The NRC published, for a 30-day public comment period, a proposed rule on November 4, 2015, to address these issues. The NRC developed this final rule based on the comments received on the proposed rule. The comments are discussed in Section IV, "Public Comment Analysis," of this document. Because the annual regulatory cost associated with an SMR is inherently uncertain before such a licensed facility is operational, the NRC intends to reevaluate the variable annual fee structure at the appropriate time to ensure the continuing satisfaction of OBRA–90 requirements. This reevalulation will occur once one or more SMR facilities becomes operational and sufficient regulatory cost data becomes available.

As explained in Section I, "Background," of this document, the NRC staff previously solicited public input regarding an annual fee structure for SMRs via an ANPR, and the NRC staff submitted two papers to the Commission discussing alternative annual fee structures, which resulted in the recommendation of the variable annual fee structure as the preferred approach for SMRs. For this final rule and regulatory analysis, the NRC staff examined the following four refined alternatives including a "no action alternative" which served as a baseline to compare all other alternatives:

1. No action.
2. Continue the existing annual fee structure for all reactors but allow for "bundling" of SMR reactor modules up to a total of 4,500 MWt as a single SMR "bundled unit."
3. Continue the existing annual fee structure for the current fleet of operating power reactors but establish a third fee class for SMRs with fees commensurate with the budgetary resources allocated to SMRs.
4. Continue the existing annual fee structure for the current fleet of operating power reactors but calculate the annual fee for each SMR site as a multi-part fee which includes minimum fee, variable fee and maximum fee.

As explained in the regulatory analysis for this final rule, the NRC staff analyzed Alternative 1 (the no action alternative) and concluded that this alternative continues to be a fair, equitable and stable approach for the existing fleet of reactors. This is because previous agency efforts to manage cost and fee allocations at a more granular level were labor intensive and resulted in minimal additional benefits to licensees when compared to the flat-fee approach (60 FR 32230; June 20, 1995). For SMRs, however, the current fee structure could produce such a large disparity between the annual fees paid by a licensee and the economic benefits that the licensee could gain from using the license that it would be contrary to OBRA–90's requirement to establish a fair and equitable fee schedule. For example, a hypothetical SMR site with 12 SMR reactor modules would have to pay 12 times the annual fee paid by a single current operating reactor—almost $54 million per year based on FY 2015 fee rule data. By comparison, Fort Calhoun, the smallest reactor in the current operating fleet, would pay approximately $4.5 million in annual fees. Such a result would be contrary to OBRA–90's requirement to establish a fair fee schedule, and therefore the no action alternative is unacceptable.

Small modular reactor licensees could apply for annual fee exemptions under 10 CFR 171.11(c). The fee exemption criteria consider the age of the reactor, number of customers in the licensee's rate base, how much the annual fee would add to the per kilowatt-hour (kWh) cost of electricity, and other relevant issues. But, as described in SECY–15–0044, there are no guarantees that an exemption request would be approved, decreasing regulatory certainty. The OBRA–90 statute also requires the NRC to establish, by rule, a schedule of charges fairly and equitably allocating annual fees among its licensees. Therefore, if the NRC anticipates up-front that its annual fee schedule will not be fair and equitable as applied to a particular class of licensees, then amending the fee schedule, rather than planning to rely on the exemption process, is the far better course for complying with OBRA–90.

The NRC staff also evaluated Alternative 2, which continues the existing annual fee structure for all reactors and allows for the bundling of the thermal ratings of SMRs on a single site up to total licensed thermal power rating of up to 4,500 MWt, which is roughly equivalent to the licensed thermal power rating of the largest reactor in the current fleet. Alternative 2 provides more fairness to SMRs than Alternative 1 because it allows SMR licensees to bundle their SMRs on a single site. However, for smaller SMR facilities, Alternative 2 would still create great disparities among SMR facilities in terms of the annual fees they would pay relative to the economic benefits they stand to gain from their NRC licenses. Consider, for illustrative purposes, an SMR site with only one NuScale reactor module. The licensee for this site would be required to pay the full annual fee, but could only spread the fee over 160 MWt—about $31,123 per MWt. In contrast, the licensee for an SMR site featuring 12 NuScale reactor modules would pay only $2,594 per MWt in annual fees. Alternative 2, therefore, only goes part of the way toward addressing the fairness and equity concerns that prompted this rulemaking. As with Alternative 1, smaller SMR licensees could apply for annual fee exemptions under 10 CFR 171.11(c). There are no guarantees that an exemption would be approved, decreasing regulatory certainty. For these reasons, and as further explained in the regulatory analysis, the NRC staff finds Alternative 2 to be an unacceptable approach.

Alternative 3 entails creating a separate fee class for SMRs, with fees commensurate with the budgetary resources allocated to SMRs, similar to the operating reactor and research and test reactor fee classes. This alternative would establish a flat annual fee assessed equally among SMR licensees. Although this approach is fair and equitable for the current operating reactor fee class, applying a flat fee approach to SMRs poses fairness problems due to the potential various sizes and types of SMR designs. In particular, a single per-reactor fee could prove unduly burdensome to SMRs with low thermal power ratings (such as 160 MWt for a single NuScale SMR) when compared to SMRs with higher-rated capacities (such as 800 MWt for a single Westinghouse SMR). Additionally, Alternative 3 is similar to the "no action" alternative in the sense that fees are based per licensed reactor or module rather than on the cumulative licensed thermal power rating. This alternative, therefore, fails to address the fee disparity created for SMRs using multiple small modules rather than fewer, larger reactors with a similar cumulative licensed thermal power rating. It is the NRC's intent to select an SMR fee alternative that is fair and equitable for the broadest possible range of SMR designs. Flat-rate alternatives such as this one are inconsistent with the "fair and equitable" requirements of OBRA–90 when applied to a fee class with the wide range of SMR thermal power capacities as described by reactor designers to date. As with the previous alternatives, SMR licensees could apply for annual fee exemptions under 10 CFR 171.11(c); however, there are no guarantees that an exemption would be approved, decreasing regulatory certainty. For these reasons, and as further explained in the regulatory analysis, Alternative 3 is an unacceptable approach.

Ultimately, the NRC staff analyzed the mechanics of the variable annual fee structure under Alternative 4 and determined that it is the best approach for assessing fees to SMRs in a fair and equitable manner under OBRA–90. Unlike the current fee structure, this approach recognizes the anticipated unique characteristics of SMRs in relation to the existing fleet. Unlike Alternative 2, this approach ensures that all SMRs are treated fairly, including those SMRs whose licensed thermal power rating are outside the 2,000 MWt–4,500 MWt range. Unlike Alternative 3, the variable annual fee structure assesses a range of annual fees to SMRs based on licensed thermal power rating, rather than assessing a single flat fee that could potentially apply to a very wide range of SMRs.

The SMR variable annual fee structure under Alternative 4 computes SMR annual fees on a site basis, considering all SMRs on the site—up to a total licensed thermal power rating of up to 4,500 MWt—to be a single "bundled unit" that would pay the same annual fee as the current operating reactor fleet. The SMR fee structure has three parts: A minimum fee (the average of the research and test reactor fee class and the spent fuel storage/reactor decommissioning fee class), a variable fee charged on a per-MWt basis for bundled units in a particular size range, and a maximum fee equivalent to the flat annual fee charged to current operating fleet reactors.

Bundled units with a total licensed thermal power rating at or below 250 MWt would only pay a minimum fee; for example, based on FY 2015 fee rule data, that minimum fee would be $153,250. This minimum fee is consistent with the principle that reactor-related licensees in existing low-fee classes may not generate substantial revenue, yet still derive benefits from NRC activities performed on generic work. Therefore, they must pay more than a *de minimis* part of the NRC's generic costs. By calculating the minimum fee for SMRs within the range of annual fees paid by other low-fee reactor classes, this methodology satisfies the OBRA–90 fairness and equity requirements because it ensures consistent NRC treatment for low-power and low-revenue reactors.

Fees for bundled units with a total licensed thermal power rating greater than 250 MWt and less than or equal to 2,000 MWt would be computed as the minimum fee plus a variable fee based on the bundled unit's cumulative licensed thermal power rating. The variable fee should generally correlate with the economic benefits the licensee is able to derive from its NRC license and will ensure that similarly rated SMRs pay comparable fees.

For a bundled unit with a licensed thermal power rating comparable to a typical large light-water reactor—*i.e.*, greater than 2,000 MWt and less than or equal to 4,500 MWt—the annual fee assessed to that bundled unit would be the same annual flat fee that is paid by a power reactor licensee in the current operating fleet. This approach ensures comparable fee treatment of facilities that stand to derive comparable economic benefits from their NRC-licensed activities.

For SMR sites with a licensed thermal power rating that exceeds 4,500 MWt, the licensee would be assessed the maximum fee for the first bundled unit, plus a variable annual fee for the portion of the thermal rating above the 4,500 MWt level and less than or equal to 6,500 MWt for the second bundled unit (the licensee would not incur a second minimum fee for the same SMR site, because minimum fees are only assessed on a per-site basis). If a site rating exceeds the 6,500 MWt level, and also is less than or equal to 9,000 MWt, then a second maximum fee would be assessed for the second bundled unit. The NRC considered eliminating the second variable portion of the fee structure and simply doubling the maximum fee for the second bundled unit, but this would produce an unfair result if the site's second bundled unit had a small licensed thermal power rating. Similar to the other three alternative fee structures, this method—doubling the maximum fee for the second bundled unit—would not have addressed the inequities that arise when a very small bundled unit pays a very large annual fee.

Therefore, as demonstrated in the regulatory analysis, the NRC staff concludes that the variable annual fee structure allows SMRs to pay an annual fee that is commensurate with the economic benefit received from its license and that appropriately accounts for the design characteristics and current expectations regarding regulatory costs. This complies with OBRA–90's requirement to establish a fee schedule that fairly and equitably allocates NRC's fees.

III. Opportunities for Public Participation

Section I B., "Background" of this document discusses the ANPR and the public comments that helped to shape the proposed rule, "Variable Annual Fee Structure for Small Modular Reactors," that NRC published in the **Federal Register** on November 4, 2015 (80 FR 68268), for a 30-day public comment period. The rule proposed to implement a variable annual fee structure for small modular reactors given their unique design features that would meet the requirements of OBRA–90 as it relates to the fairness and equity of fees. The public comment period for the proposed rule closed on December 4, 2015. The NRC received nine public comment submissions that are discussed in Section IV, "Public Comment Analysis," of this document.

The NRC held a category 3 public meeting on the proposed rule and draft regulatory analysis (ML15226A588) during the comment period, specifically, on November 16, 2015, to promote transparency and obtain feedback from industry representatives, licensees and other external stakeholders. During the meeting, NRC staff addressed questions pertaining to the 10 CFR parts 170 and 171 definitions, the fee methodology for the bundled unit and out-of-scope comments such as life-cycle costs of SMRs, the charging of fees to future licensees for the monitoring of both air and water emitted around nuclear facilities, and the nuclear waste fee.

IV. Public Comment Analysis

The NRC received nine comment submissions on the proposed rule. The comments are posted on *www.regulations.gov* under Docket ID NRC–2008–0664. The majority of commenters support a variable annual fee structure for small modular reactors based on the total cumulative licensed thermal power rating. Some commenters suggested that the proposed rulemaking be expanded to non-light water SMRs and that the proposed definitions and regulations be modified as applicable under 10 CFR parts 170 and 171. Another commenter believed the proposed rule could be more fair to the existing fleet. The commenters are listed and classified in the following table:

Commenter	Affiliation	ADAMS Accession No.
Nancy Foust	Private Citizen	ML15320A546 (#1).
Per Peterson	University of California, Berkeley	ML15320A547 (#2).
Tyler Ellis	Massachusetts Institute of Technology (MIT)	ML15327A219 (#3).
Caroline Cochran	UPower Technologies, Inc	ML15341A349 (#4).
Christopher Bergan	Private Citizen	ML15341A350 (#5).
Douglas Weaver	Westinghouse Electrical Company (WEC)	ML15341A351 (#6).
Edward C. Rampton	Utah Associated Municipal Power Systems (UAMPS)	ML15341A352 (#7).
Zackary J. Rad	NuScale Power LLC	ML15341A353 (#8).
Russell J. Bell	Nuclear Energy Institute	ML15343A512 (#9).

A. Specific 10 CFR Part 170 Issues

Comment: One commenter was unclear as to why the definitions "small modular reactor," "small modular reactor site," and "bundled unit" being proposed to 10 CFR part 170 were necessary, because these definitions did not appear to be related to the fees charged in this section. The commenter further stated that the NRC should delete the definition for bundled unit, small modular reactor, and small modular reactor site, but keep the definition for small modular reactor under 10 CFR part 170 if necessary. (NEI, UAMPS and UPower Technologies)

Response: The NRC agrees with the commenter that the bundled unit definition should be removed from 10 CFR part 170 because the term is used solely for the purpose of calculating annual fees for SMRs. However, the NRC will retain the definitions of SMR and SMR site under 10 CFR part 170 to make transparent that SMRs and SMR sites can be charged hourly fees under 10 CFR part 170 for specific services performed by the NRC for these licensees. A change was made to the final rule in response to this comment.

B. Specific 10 CFR Part 171 Issues

Comment: One commenter stated, ". . . the rule language is not entirely clear on the relationship between SMR licenses, SMR modules, SMR plants, the SMR site (which may include several SMR modules, plants, and licenses), and bundled units (which serve as the basis for the calculation of the annual fee)." The commenter suggested that the NRC modify the definition of "bundled unit" to mean, "A measure of the cumulative licensed thermal power rating for one or more SMRs located on a single site. One bundled unit is less than or equal to 4,500 MWt. An additional bundled unit is not established until the preceding bundled unit reaches the cumulative 4,500 MWt rating. The thermal rating of a module can be split between two bundled units for the purposes of assessing annual fees under § 171.15(e)." (NEI).

Response: The NRC agrees with the commenter that the definitions as identified by the commenter and their relationships under the SMR fee structure methodology could be made more clear. The language in § 171.3, Scope, identifies the licensees and others subject to annual fees. For the purposes of this rule, any SMR module, reactor, plant, or site licensed for operation by the NRC is subject to annual fees under 10 CFR part 171. For the purposes of this rule, the SMR module is a reactor. As noted in the regulatory analysis, the NRC defines the building that houses co-located SMR reactor modules sharing common systems as a "plant," and the geographically bounded area that houses single or multiple plants as a "site." Finally, the definition of a "bundled unit" has been reworded to provide more clarity while addressing the commenter's concerns. A change was made to the final rule in response to this comment.

Comment: The same commenter stated that the § 171.15(e)(1) proposed language regarding the annual fee paid for each license held could be misinterpreted to mean that the determination of a bundled unit is limited to the SMR modules covered by a single license, regardless of the number of licenses that comprise a single SMR plant or the number of SMR plants on a single SMR site. The commenter suggested that the NRC should modify § 171.15(e)(1), Annual Fees, by stating, "Each person holding an operating license for a small modular reactor issued under part 50 of this chapter or that holds a combined license issued under part 52 of this chapter, after the Commission has made the finding under 10 CFR 52.103(g) shall pay the annual fee for all licenses held for an SMR site during the fiscal year in which the fee is due." (NEI)

Response: The NRC agrees with the commenter that the rule language could be more clear regarding the relationship between the NRC's assessment of annual fees to SMRs and SMR licenses. The final language in this section has been clarified to indicate that the bundled unit concept—which is used to compute annual fees—applies on a site-wide basis and is independent of the number of actual SMR licenses or the sequencing of the SMR licenses issued for that site. A change was made to § 171.15(e)(1) and to § 171.5 in the final rule as a result of this comment.

Comment: The same commenter stated that the current rule language in § 171.15(e)(1) and the definition of "bundled unit" does not make clear that a bundled unit can be comprised of modules from more than one SMR plant, and that an additional bundled unit is not established before the preceding bundled unit reaches the cumulative 4,500 MWt rating. (NEI)

Response: The NRC agrees with the commenter that the proposed bundled unit definition and proposed language for § 171.15(e)(1) could be more clear regarding the transition from the first bundled unit to additional bundled units. As explained in the previous comment, a change was made to § 171.15(e)(1) and to § 171.5 in the final rule as a result of this comment.

Comment: One commenter stated that the proposed rule does not explicitly state that the annual fee assessed for SMRs, a type of power reactor, is in lieu of annual fees assessed for power reactors under § 171.15(b). This could lead to the misinterpretation that SMRs are assessed both sets of annual fees. The commenter stated the NRC should revise § 171.15(e)(3) to read, "(3) The annual fee for an SMR collected under paragraph (e) of this section is in lieu of any fee otherwise required under paragraph (b) of this section. The annual fee under paragraph (e) of this section covers the same activities listed for the power reactor base annual fee and spent fuel storage/reactor decommissioning reactor fee." (NEI)

Response: The NRC agrees with the commenter that the proposed language could imply that an SMR licensee would be charged a base annual fee and spent fuel storage/reactor decommissioning annual fee in addition to an SMR annual fee. A change was made to the final rule in response to this comment. Specifically, the language in § 171.15(e)(3) has been revised to read, "(3) The annual fee for an SMR collected under paragraph (e) of this section is in lieu of any fee otherwise required under paragraph (b) of this section. The annual fee under paragraph (e) of this section covers the same activities listed for the power reactor base annual fee and spent fuel storage/reactor decommissioning reactor fee."

Comment: One commenter stated that the definition of "variable rate" could be simplified because it is difficult to determine how the variable rate applies to additional bundled units, and it appears inconsistent with the proposed definition of a bundled unit. The commenter suggested that NRC redefine the variable rate definition by stating, "Variable rate means a per-MWt fee factor applied to all bundled units on a site. For the first bundled unit with a licensed thermal power rating greater than 250 MWt and less than or equal to 2,000 MWt, the factor is based on the difference between the maximum fee and the minimum fee, divided by 1,750 MWt (the variable fee licensed thermal rating range). For additional bundled units with a licensed thermal power rating greater than 0 and less than or equal to 2,000 MWt, the factor is based on the maximum fee divided by 2,000 MWt." (NEI)

Response: The NRC agrees with the commenter that the proposed variable rate definition is inconsistent with the proposed definition of bundled unit. The NRC has redefined the variable rate based on the commenter's suggestion and revised the bundled unit definition for clarity. A change was made to the final rule in response to this comment.

Comment: One commenter believes the description of additional bundled units in the table § 171.15(e)(2) is confusing and unnecessary. The same commenter believes it is inconsistent with the proposed definition of "bundled unit," which states that a "bundled unit is less than or equal to 4,500 MWt." The table can be interpreted to mean that the range of thermal capacity is describing the SMR site thermal power rating totals, and not an additional bundled unit. Additionally, including SMR site thermal power rating totals in the table unnecessarily complicates the bundled approach. The table can also be interpreted to mean the first 4,500 MWt of additional bundled units (*e.g.,* the second bundled unit) is not assessed an annual fee. The description could also be interpreted to unnecessarily limit the SMR site total thermal rating to 9,000 MWt. The same commenter is not aware of any other fee-based requirement that would limit a site's total thermal output, but notes there is at least one nuclear facility in the U.S. with almost a 12,000 MWt total thermal rating. The rule should clarify the following: (1) If any bundled unit would exceed 4,500 MWt, an additional bundle would exist for the portion of the thermal rating above 4,500 MWt; and (2) the same bundled fee schedule should apply to any successive bundle. The commenter suggested the NRC revise the description of addition bundled units in the thermal rating power rating scale by replacing ">4,500 MWt ≤ 6,500 MWt" with ">0 MWt ≤ 2,000 MWt" and replacing ">6,500 ≤9,000 MWt" with ">2,000 MWt." (NEI)

Response: The NRC agrees with the commenter that the proposed table and the bundled unit definition could be interpreted to read that licensees are limited to bundled units less than 9,000 MWt, yet the proposed definition of bundled unit allows for bundled units to exceed 9,000 MWt. Therefore, the NRC has revised the table for § 171.15(e)(2) and bundled unit definition for clarity based on the commenter's concerns. A change was made to the final rule in response to this comment. The bundled unit definition has been revised as mentioned in our previous response and the table for § 171.15(e)(2) has been revised to read as follows: (2) The annual fees for a small modular reactor(s) located on a single site to be collected by September 30 of each year, are as follows:

Bundled unit thermal power rating	Minimum fee	Variable fee	Maximum fee
First Bundled Unit			
0 MWt ≤ 250 MWt	TBD	N/A	N/A.
> 250 MWt ≤ 2,000 MWt	TBD	TBD	N/A.
> 2,000 MWt ≤ 4,500 MWt	N/A	N/A	TBD.
Additional Bundled Units			
0 MWt ≤ 2,000 MWt	N/A	TBD	N/A.

Bundled unit thermal power rating	Minimum fee	Variable fee	Maximum fee
>2,000 MWt ≤ 4,500 MWt	N/A	N/A	TBD.

Comment: One commenter stated that the new fee structure must be fair to both SMRs and the current operating fleet. The current operating fleet should not subsidize SMR's regulatory costs and that the proposed rule could be made fairer in this regard. (Westinghouse)

Response: The NRC agrees in part and disagrees in part with this comment. The NRC agrees that the new structure must be fair to both SMRs and to the current operating fleet. As discussed, OBRA–90 requires this fairness, and the NRC has worked through a variety of competing interests to attain the most balanced approach possible.

With respect to the degree of fairness achieved by the rule, the NRC disagrees with the comment. The OBRA–90 statutes require the NRC to collect annual fees from licensees, including licensees from the operating reactor fee class. Therefore, adding a new SMR to the reactor fleet would result in a greater base of operating reactors over which to spread the required 10 CFR part 171 annual fee collection; this, in turn, leads to a lower 10 CFR part 171 fee amount per reactor. Under the variable annual fee structure, SMRs with a bundled unit rating below 2,000 MWt will pay less in 10 CFR part 171 fees than a current operating reactor. Therefore, the addition of an SMR would result in a slightly smaller fee reduction than would have been realized for the addition of a large light-water reactor. Using FY15 data, this difference in fee reduction is, at most, about one percent of the 10 CFR part 171 annual fee for each current operating reactor. The NRC believes this is a fair result because SMRs should pay annual fees that are commensurate with the economic benefit received from their license, and this rule achieves that objective without altering the existing fee structure for operating reactors. As previously explained, this rule also achieves this objective with minimal impacts to the existing fleet. No change was made to the final rule in response to this comment.

Comment: One commenter believes that linking the fees paid by research and test reactors (RTRs) to fees paid by smaller SMRs under the Alternative 4 appears to violate the fairness test required by OBRA–90. The commenter further states RTRs are used for training and research which provides benefits to the entire industry. The commenter points out that RTRs do not sell power nor do they compete with the current fleet of reactors. The same commenter, therefore, suggests that the NRC not link the minimum SMR fee to RTR fees, but instead develop an estimate of the minimum costs of the regulatory services that it expects to provide to an SMR. This method would reduce the likelihood that the fees would have to be substantially altered after an SMR has been operating and is in alignment with OBRA–90 as it pertains to assessed charges having a reasonable relationship to the cost of providing regulatory services. (Westinghouse)

Response: The NRC disagrees with the comment. At this time, the NRC is unable to develop an estimate of the minimum costs of regulatory services that it expects to provide to an SMR due to lack of cost data and operating experience. Therefore, the minimum fee is calculated by averaging annual fees for both the research and test reactor fee class and the spent fuel storage/reactor decommissioning fee class. The minimum fee ensures that even the smallest SMRs bear some of the annual 10 CFR part 171 fee burden. Although a size and purpose disparity exists between the smallest currently proposed SMRs and RTRs, the minimum fee calculation was not intended to equate the regulatory support requirements of SMRs and RTRs. Rather, the calculation was intended to identify current fees for low power reactor fee classes to set an initial minimum fee value. The NRC believes the lower power reactor fee classes serving as the threshold for the minimum fee satisfies the requirements of OBRA–90 as it relates to the fairness and equitable distribution of fees because it establishes consistency between low-power SMRs and other low-power reactor fee classes; once quantifiable data for SMRs becomes available, the NRC will then reevaluate its minimum fee methodology to ensure that it remains sound. No change was made to the rule in response to this comment.

Comment: One commenter states that it appears the NRC has concluded that some SMRs may not be economically viable if they pay for the regulatory services they consume; and this is not a compelling reason for the NRC to seek to subsidize the regulatory cost of SMRs with increased fees on another fee class. The commenter encourages the NRC staff to consider alternatives that more clearly align the proposed annual fee for SMRs with the regulatory services they use. The commenter suggests that the NRC create a fee class combining alternatives 3 and 4 from the draft regulatory analysis or create a separate fee class as described in Alternative 3, but with the sliding fee scale described in Alternative 4. The latter alternative would address the NRC staff's primary concern that all SMRs pay the same fee regardless of output. (Westinghouse)

Response: The NRC disagrees with the comment. First, the NRC did not state that SMRs may not be economically viable if they pay for the regulatory services they consume. Rather, the NRC's proposed rule and proposed regulatory analysis explained that charging large and flat annual fees to very small SMRs may not satisfy OBRA–90's requirement to establish a fair and equitable fee schedule. The variable fee methodology selected in this final rule offers the best means of satisfying those OBRA–90 requirement for all operating reactors, including future SMRs. Further, the commenter's proposal to combine features of Alternatives 3 (a separate fee class) and 4 (a sliding fee scale) by creating a new fee class is not a viable option at this time. As mentioned elsewhere in this document and in the regulatory analysis, the NRC lacks quanititative data that shows the estimated costs of providing generic regulatory services to SMRs. Right now, the NRC must establish the variable sliding fee scale within the operating reactor fee class—thereby linking SMR fees to the existing fleet's fees—because the absence of this data means that the NRC cannot anchor SMR fees in any other way. As cost data and operating experience for SMRs are accumulated, the NRC will propose adjustments to fees as needed to make sure that the fees charged to SMRs (and to all operating reactors) are commensurate with the regulatory support services provided by the NRC to meet the requirements of OBRA–90. At that time, it may be be necessary to "de-link" SMR fees from the existing fleet's fees and establish a brand new variable fee class similar to what the commenter proposed. No change was made to the rule in response to this comment.

C. Regulatory Analysis

Comment: One commenter stated that, in the draft regulatory analysis, an equation on page 16 of the calculation is not clear and could be interpreted to be inconsistent with the detailed process for calculating the maximum fee, which is described in more detail in Attachment A. The commenter suggested that the NRC revise the numerator of the equation to calculate the "maximum fee" to read, "Total Part 171 Annual Fee (less all minimum and variable SMR fees)." (NEI)

Response: The NRC agrees with commenter that the equations on page 16 of the RA were not clearly aligned with the Attachment A description of the step-by-step 10 CFR part 171 annual fee process. As further described in the regulatory analysis, calculating the maximum fee to be paid by the operating fleet reactors and SMR bundled units rated > 2,000 MWt is an iterative, dynamic process. Because the equations on page 16 of the RA did not accurately reflect the dynamic nature of these calculations, the NRC removed those equations to eliminate potential confusion between the original simplified equations and the iterative calculation process referenced in Attachment A. Further, the NRC refined the step-by-step calculation process in Attachment A to achieve greater clarity. These changes bring the descriptive text and calculation process into closer alignment with the conceptual fee representation in Figure 3 of the regulatory analysis. A change was made to the regulatory analysis in response to this comment.

Comment: The commenter believes that the regulatory analysis should explain in more detail NRC's assumption that SMRs, through a combination of simplicity, advanced safety features, and modular construction methods, will require less oversight and regulatory services than the current fleet of reactors. (Westinghouse)

Response. The NRC disagrees that the regulatory analysis should provide more detail on NRC's assumptions for SMRs and believes that the commenter has overstated the NRC's basis for promulgating the proposed rulemaking. The Executive Summary of the proposed rule discussed potential SMR characteristics, and stated, "These characteristics include modular design, factory component fabrication, and thermal power capacities of 1,000 megawatts thermal (MWt) or less per module. These SMRs also may include safety and security design in a lower regulatory oversight burden for this type of reactor." In fact, the lack of operational data on costs for these future reactor plants was the main reason for using a qualitative approach in the regulatory analysis. The NRC staff agrees with the commenter that the SMR variable annual fee rule should be re-assessed once operational cost data is accumulated. To this end, the NRC staff proposed periodic assessments of the actual costs associated with licensed SMRs so that the NRC could make adjustments to the SMR fee structure, if necessary. As the industry and the NRC gathers operating experience with SMRs, a better understanding of ". . . how design features may be translated into annual fee reductions," as mentioned by the commenter, should become more apparent. SMR operating experience data should provide insights that could confirm correlations between design features and the level of NRC oversight typically needed for these new types of power plants; and provide indications of whether further fee adjustments for SMRs are required. No change was made to the regulatory analysis in response to this comment.

D. Other

Issuance of Final Rule

Comment: Several commenters encouraged prompt finalization of the proposed rule. (UPower Technologies, NuScale, NEI, UAMPS)

Response: The NRC agrees with the commenters. No change was made to the final rule in response to this comment.

Support of Proposed Rule

Comment: Most commenters support the NRC's proposal to assess annual fees for SMRs licensees based on the total thermal power output of the facility because it is a reasonable approach for providing a fair and equitable fee structure for SMRs in absence of data on regulatory costs on oversight for SMRs. (University of California—Berkeley, MIT, UPower Technologies, UAMPS, Nuscale, NEI)

Response: No response required. No change was made to the final rule in response to this comment.

Comment: One commenter stated that the proposed use of cumulative thermal power rating provides the most appropriate basis for establishing the fee because the rate of the production of fission product which creates the most important hazard associated with fission power is directly proportional to cumulative reactor thermal power, and therefore to the total source term that might be mobilized in a reactor accident. The SMRs provide higher intrinisic safety because this source term is divided into smaller quantities, reducing the maximum release possible if an accident occurs in a reactor unit. The same commenter stated SMR designs also can be expected to make more extensive use of intrinsic feedback and passive safety features, significantly reducing the complexity and inspection requirements for reactor safety systems compared to existing large light water reactors. (University of California—Berkeley)

Response: The NRC agrees that SMRs could have some or all of the design and operational advantages identified by the commenter. However, the NRC has not yet received any SMR application for review. Therefore, we have no basis on which to correlate or assess the SMR attributes and potential advantages cited in the comment with a specific SMR design. No change was made to the final rule in response to this comment.

Comment: Some commenters stated that the proposed rule provides a more equitable basis for assessing 10 CFR part 171 fees for SMRs that incorporate enhanced and design safety features which are expected to lower generic regulatory and oversight costs. (NEI, NuScale, UAMPS)

Response: No response required. No change was made to the final rule in response to this comment.

Comment: One commenter stated that the current disparity in annual fees between current light water reactors and small modular reactors is a key business consideration affecting the overall economics of the Carbon Free Power Project. (UAMPS)

Response: No response required. No change was made to the final rule in response to this comment.

Comment: One commenter believes the rulemaking provides clarity on 10 CFR part 171 fees that support near-term business decisions regarding submittal of combined license applications for NuScale's customers, the first of which is anticipated in late 2017 or early 2018. (Nuscale)

Response: No response required. No change was made to the final rule in response to this comment.

Reevaluation of Variable Annual Fee Structure for SMRs

Comment: Several commenters stated the NRC should state in the final rulemaking package (*e.g.,* in the statements of consideration or in a separately issued Commission paper) its commitment to reviewing data on costs of oversight for SMRs as it becomes available and adjusting the SMR variable fee structure to ensure the annual fees equitably align with the cost of oversight of this class of reactors. One commenter stated that the appropriate timeframe for revisiting 10 CFR part 171 fees may be approximately three years after commercial operation date for the first reactor. The commenter believes this timeframe, with the deployment of a NuScale design with 12 reactors, would provide the operational experience of having undertaken 12 refuelings and would better inform the level of regulatory oversight required by the NRC for this type of design. Another commenter stated that the NRC should, in the "Final Regulatory Basis for Proposed Changes to 10 CFR part 171," clearly and explicitly identify assumptions important to forming the basis for the final variable fee rule for SMRs. Another commenter suggested reevaluation of the fee structure for advanced reactors may be warranted as cost of oversight information becomes available. (NEI, NuScale, UAMPS, UPower Technologies)

Response: The NRC agrees that it will be necessary to reevaluate the variable annual fee structure for SMRs as an SMR becomes operational and regulatory cost data becomes available to ensure the continuing satisfaction of OBRA–90 requirements. Because the NRC cannot anticipate with certainty when sufficient information will be available, the NRC is unable to estimate the precise time period when this reevaulation will occur. The type of information that the NRC will likely need to reevaluate the variable fee structure may include data on the initial licensing of an SMR facility, performance of refueling outages, performance of onsite inspections, and licensing actions and other regulatory services provided to an operational SMR. No change was made to the final rule or regulatory analysis in response to this comment.

Small Modular Reactor Definition

Comment: Two commenters suggested the the NRC expand the small modular reactor definition of light water reactor to include all types of new fission reactor (*e.g.* sodium cooled, molten salt, etc.) One of the commenters suggested that if the NRC were to include non-light water reactors in the definition, the NRC should look to the Gen IV International Forum for a better one as the United States, International Atomic Energy Agency and the Organisation for Economic Co-operation and Development's Nuclear Energy Agency are all members of the Gen IV International Forum. (MIT, University of CA, Berkeley)

Response: The NRC disagrees with the comment. The NRC has chosen to limit the scope of this proposed rule to light-water SMRs. This is because the light-water SMR designs that have been discussed with the NRC in pre-application discussions to date are similar to the current U.S. operating fleet of reactors in terms of physical configuration, operational characteristics, and applicability to the NRC's existing regulatory framework. The NRC may consider the inclusion of non-light water SMRs in a future rulemaking once the agency has increased understanding of these factors with respect to non-light water designs. No change was made to the final rule in response to this comment.

E. Out-of-Scope Comments

Comment: The NRC should consider seeking limited legislative relief from OBRA–90. SMRs are not anticipated to be licensed for another decade, and the NRC would have to time find other legislative solutions. (Westinghouse)

Response: The NRC considers this comment to be outside the scope of this rulemaking amending the current annual fee structure for SMRs. Additionally, the NRC considers this technical rulemaking to be an inappropriate vehicle for seeking legislative relief for SMRs under the requirements of OBRA–90. Apart from this rulemaking, the NRC annually promulgates a rulemaking to adjust its fees without changing the underlying principles of its fee policy to comply with the statutory requirements for cost recovery in OBRA–90 and the AEA. Small modular reactors may require lower regulatory oversight burden compared to the existing fleet due to potentially unique design features and safety attributes. Because the NRC is implementing a variable annual fee structure for SMRs which would comply with the fairness and equitable distribution of fees' requirement under OBRA–90, a request for legislative relief by the NRC is unnecessary. Finally, as discussed in SECY–15–0044, the staff's recommended alternative for establishing an SMR variable annual fee rule supports the agency's goals of transparency and providing regulatory certainty to potential SMR applicants. The commenter's recommendation of finding other legislative solutuions would likely take considerable additional time and decrease regulatory certainty for these potential applicants. Therefore, no change was made to the final rule in response to this comment.

Comment: One commenter stated because of the ongoing decommissioning of a large number of U.S. power reactors and the uncertain production of SMR units, the NRC should ask Congress to change their funding system. Instead of relying heavily on fees from power plant operators, a significant portion of the funding should be allocated by Congress. The same commenter believes collecting operating reactor fees creates a conflict of interest. As more aging reactors shut down, there is a potential for budget shortfall, yet the NRC's workload will increase for supervising decommissioning and defunct nuclear sites that fall under its authority. (Private Citizen)

Response: The NRC considers this comment to be outside the scope because this final rule does not seek to change the fee collection requirements under OBRA–90. Instead, this final rule is implementing a variable annual fee structure that is fair and equitable to SMRs, unlike the current annual fee structure. The requirements in OBRA–90 authorize the NRC to collect approximately 90 percent of its budget authority through fees assessed to licensees and applicants for services provided by the NRC. Additonally, OBRA–90 instructs the NRC to "establish, by rule, a schedule of charges fairly and equitably allocating" various generic agency regulatory costs "among licensees" and, "[t]o the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees." The hourly fees assessed to an operating reactor licensee which could include a decommissioning reactor recoup the NRC's cost for services such as licensing and inspection activities which benefit the licensee. The annual fees assessed to the operating reactor fleet recoup the NRC's cost for services such as research and other generic activities which benefit the entire fee class. Regarding a potential budget shortfall, the NRC requests from Congress only those resources necessary to conduct programs and activities which are efficient and effective to comply with the agency's mission. No change was made to the final rule in response to this comment.

Comment: One commenter mentioned that ThorCon signed a memorandum of understanding with Indonesia to build their Gen-4 molten salt reactor prototype in that nation, and it would be shameful if a trend began where several SMRs were initially developed within the USA, but tested and built in other countries. Importing our own technology is not what made the USA a great nation. (Private Citizen)

Response: The NRC considers this comment to be outside the scope of this rulemaking amending the current annual fee structure for SMRs. This final rule addresses the assessment of annual fees for future SMRs (defined as light-water reactors for the purposes of this rulemaking) using the implementation of a variable annual fee structure for SMRs Therefore, this comment, which is based on the fee treatment of future non-LWRs, is not applicable in this context. No change was made to the final rule in response to this comment.

Comment: One commenter believes NRC's Project Aim is the best near-term option to reduce fees for classes of NRC licensees and encourage NRC's timely completion of this initiative. (Westinghouse)

Response: The NRC considers this comment to be outside the scope of this rulemaking because this final rule is limited to the assessment of annual fees to SMRs only as it relates to OBRA–90. Therefore, the NRC's efforts under Project Aim such as improving transparency and simplification of how the NRC computes fees are not being considered under this final rule. No change was made to the final rule in response to this comment.

V. Discussion of Amendments by Section

The following paragraphs describe the specific changes made by this rulemaking.

Section 170.3 Definitions

The NRC is adding definitions for "small modular reactor (SMR)," and "small modular reactor site (SMR site)."

Section 171.5 Definitions

The NRC is adding definitions for "bundled unit," "maximum fee," "minimum fee," "small modular reactor (SMR)," "small modular reactor site (SMR site)," "variable fee," and "variable rate."

Section 171.15 Annual Fees: Reactor Licenses and Independent Spent Fuel Storage Licenses

The NRC is redesignating current paragraph (e) as new paragraph (f) and adding new paragraphs (e)(1), (e)(2), and (e)(3) to define activities that comprise SMR annual fees and the time period in which the NRC must collect annual fees from SMR licensees.

VI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VII. Regulatory Analysis

The NRC has prepared a regulatory analysis for this final rule. The analysis examines the costs and benefits of the alternatives considered by the NRC. The regulatory analysis is available as indicated in the "Availability of Documents" section of this document.

VIII. Backfitting and Issue Finality

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required. A backfit analysis is not required because these amendments do not require the modification of, or addition to, systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

X. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this final rule.

XI. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

XII. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

XIII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC will revise its licensing, inspection, and annual fee regulations to establish a variable annual fee structure for SMRs. This action does not constitute the establishment of a standard that contains generally applicable requirements.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No./**Federal Register** citation
Notice of Proposed Rulemaking for a Variable Annual Fee Structure for Small Modular Reactors, dated November 4, 2015.	80 FR 68268
Advanced Notice of Proposed Rulemaking (ANPR) for a Variable Annual Fee Structure for Power Reactors, dated March 25, 2009.	74 FR 12735
Summary of ANPR Comments	ML14307A812
SECY–09–0137, "Next Steps for Advance Notice of Proposed Rulemaking on Variable Annual Fee Structure for Power Reactors," dated September 23, 2009.	ML092660166
ANS Position Paper, "Interim Report of the American Nuclear Society President's Special Committee on Small and Medium Sized Reactor (SMR) Generic Licensing Issues," dated July 2010.	ML110040946
SRM for SECY-09-0137, "Staff Requirements—SECY–09–0137—Next Steps for Advance Notice of Proposed Rulemaking on Variable Annual Fee Structure for Power Reactors," dated October 13, 2009.	ML092861070
NEI Position Paper, "NRC Annual Fee Assessment for Small Reactors," dated October 2010	ML103070148
Informational Memorandum to the Commission, "Resolution of Issue Regarding Variable Annual Fee Structure for Small and Medium-Sized Nuclear Power Reactors," dated February 7, 2011.	ML110380251

Document	ADAMS Accession No./**Federal Register** citation
SECY–15–0044, "Proposed Variable Annual Fee Structure for Small Modular Reactors," dated March 27, 2015	ML15051A092
SRM for SECY–15–0044, "Proposed Variable Annual Fee Structure for Small Modular Reactors" dated May 15, 2015	ML15135A427
Draft Regulatory Analysis for Proposed Changes to 10 CFR Part 171 "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC," dated October 6, 2015.	ML15226A588
SECY–11–0079, "License Structure for Multi-Module Facilities Related to Small Modular Nuclear Power Reactors", dated June 12, 2011.	ML110620459
Regulatory Analysis for Changes to the Final Rule Amending 10 CFR Part 171, "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC".	ML16054A285

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171:

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 1. The authority citation for part 170 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w) (42 U.S.C. 2014, 2201(w)); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2214; 31 U.S.C. 901, 902, 9701; 44 U.S.C. 3504 note.

■ 2. In § 170.3, add in alphabetical order the definitions for *small modular reactor (SMR)* and *small modular reactor site (SMR site)* to read as follows:

§ 170.3 Definitions.

* * * * *

Small modular reactor (SMR) for the purposes of calculating fees, means the class of light-water power reactors having a licensed thermal power rating less than or equal to 1,000 MWt per module. This rating is based on the thermal power equivalent of a light-water SMR with an electrical power generating capacity of 300 MWe or less per module.

Small modular reactor site (SMR site) is the geographically bounded location of one or more SMRs and a basis on which SMR fees are calculated.

* * * * *

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 3. The authority citation for part 171 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w), 223, 234 (42 U.S.C. 2014, 2201(w), 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2214; 44 U.S.C. 3504 note.

■ 4. In § 171.5, add in alphabetical order the definitions for *bundled unit, maximum fee, minimum fee, small modular reactor (SMR), small modular reactor site (SMR site), variable fee* and *variable rate* to read as follows:

§ 171.5 Definitions.

* * * * *

Bundled unit means the cumulative licensed thermal power rating of a number of SMR reactors on the same site that, for 10 CFR part 171 purposes only, is considered a single fee unit. The maximum capacity of a bundled unit is 4,500 MWt. A single SMR reactor can be part of two bundled units if it completes the capacity of one unit and begins the capacity of an additional unit. For a given site, the use of the bundled unit concept is independent of the number of SMR plants, the number of SMR licenses issued, or the sequencing of the SMR licenses that have been issued. The first bundled unit on a site is assessed a minimum fee for capacity less than or equal to 250 MWt, plus a variable fee for capacity greater than 250 MWt and less than or equal to 2,000 MWt. Bundled units with capacities greater than 2,000 MWt and less than or equal to 4,500 MWt are assessed a maximum fee that is equivalent to the annual fee paid by the current reactor fleet. The maximum fee replaces the minimum and variable fee for the first bundled unit. Each additional increment of 4,500 MWt of SMR capacity on the same site constitutes an additional bundled unit. No minimum fee is assessed to additional bundled units. For any additional bundled unit, a variable fee applies to capacities less than or equal to 2,000 MWt and the maximum fee applies to capacities greater than 2,000 MWt and less than or equal to 4,500 MWT. For additional bundled units, the maximum fee replaces the variable fee.

* * * * *

Maximum fee is the highest fee paid by a single bundled unit. It is applied to all bundled units on an SMR site with a licensed thermal power rating greater than 2,000 MWt and less than or equal to 4,500 MWt and is equal to the flat annual fee paid by existing fleet power reactors.

Minimum fee means one annual fee component paid by the first bundled unit on a site with a cumulative licensed thermal power rating of 2,000 MWt or less. For the first bundled unit on a site with a licensed thermal power rating of 250 MWt or less, it is the only annual fee that a licensee pays.

* * * * *

Small modular reactor (SMR) for the purposes of calculating fees, means the class of light-water power reactors having a licensed thermal power rating less than or equal to 1,000 MWt per module. This rating is based on the thermal power equivalent of a light-water SMR with an electrical power generating capacity of 300 MWe or less per module.

Small modular reactor site (SMR site) is the geographically bounded location of one or more SMRs and a basis on which SMR fees are calculated.

* * * * *

Variable fee means the annual fee component paid by the first bundled unit on a site with a licensed thermal power rating greater than 250 MWt and less than or equal to 2,000 MWt; or the annual fee component paid by additional bundled units on a site that have a licensed thermal power rating of less than or equal to 2,000 MWt. The variable fee is the product of the bundled unit thermal power capacity (in the applicable range) and the variable rate.

Variable rate means a per-MWt fee factor applied to all bundled units on site with a licensed thermal power rating less than or equal to 2,000 MWt. For the first bundled unit on a site with a licensed thermal power rating greater than 250 MWt and or less than or equal to 2,000 MWt, the variable rate is based on the difference between the maximum fee and the minimum fee, divided by 1,750 MWt (the variable fee licensed thermal rating range). For additional bundled units with a licensed thermal power rating less than or equal to 2,000 MWt, the variable rate is based on the maximum fee divided by 2,000 MWt.

■ 5. In § 171.15, redesignate paragraph (e) as paragraph (f) and add new paragraph (e) to read as follows:

§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(e)(1) Each person holding an operating license for an SMR issued under 10 CFR part 50 of this chapter or a combined license issued under 10 CFR part 52 after the Commission has made the finding under 10 CFR 52.103(g), shall pay the annual fee for all licenses held for an SMR site. The annual fee will be determined using the cumulative licensed thermal power rating of all SMR units and the bundled unit concept, during the fiscal year in which the fee is due. For a given site, the use of the bundled unit concept is independent of the number of SMR plants, the number of SMR licenses issued, or the sequencing of the SMR licenses that have been issued.

(2) The annual fees for a small modular reactor(s) located on a single site to be collected by September 30 of each year, are as follows:

Bundled unit thermal power rating	Minimum fee	Variable fee	Maximum fee
First Bundled Unit			
0 MWt ≤250 MWt	TBD	N/A	N/A
>250 MWt ≤2,000 MWt	TBD	TBD	N/A
>2,000 MWt ≤4,500 MWt	N/A	N/A	TBD
Additional Bundled Units			
0 MWt ≤2,000 MWt	N/A	TBD	N/A
>2,000 MWt ≤4,500 MWt	N/A	N/A	TBD

(3) The annual fee for an SMR collected under paragraph (e) of this section is in lieu of any fee otherwise required under paragraph (b) of this section. The annual fee under paragraph (e) of this section covers the same activities listed for power reactor base annual fee and spent fuel storage/reactor decommissioning reactor fee.

* * * * *

Dated at Rockville, Maryland, this 6th day of May.

For the Nuclear Regulatory Commission.

Maureen E. Wylie,

Chief Financial Officer.

[FR Doc. 2016–11975 Filed 5–23–16; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2013–BT–STD–0007 and EERE–2013–BT–STD–0021]

RIN 1904–AC95 and 1904–AD11

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Small, Large, and Very Large Air-Cooled Commercial Package Air Conditioning and Heating Equipment and Commercial Warm Air Furnaces

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Confirmation of effective date and compliance dates for direct final rule.

SUMMARY: The U.S. Department of Energy (“DOE”) published a direct final rule to establish amended energy conservation standards for small, large, and very large air-cooled commercial package air conditioning and heating equipment and commercial warm air furnaces in the **Federal Register** on January 15, 2016. DOE has determined that the comments received in response to the direct final rule do not provide a reasonable basis for withdrawing the direct final rule. Therefore, DOE provides this notice confirming adoption of the energy conservation standards established in the direct final rule and announcing the effective date of those standards.

DATES: The direct final rule published on January 15, 2016 (81 FR 2420) became effective on May 16, 2016. Compliance with the amended standards in this final rule will be required for small, large, and very large air-cooled commercial package air conditioning and heating equipment listed in this final rule starting on January 1, 2018, for the first set of standards and January 1, 2023, for the second set of standards. Compliance with the amended standards established for commercial warm air furnaces in this final rule is required starting on January 1, 2023.

ADDRESSES: The dockets, which include **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the dockets are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page for small, large, and very large air-cooled commercial package air conditioning and heating equipment can be found at: *www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0007*. A link to the docket Web page for commercial warm air furnaces can be found at: *www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0021*. The *www.regulations.gov* Web page will contain instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the dockets, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 286–1692. Email: *John.Cymbalsky@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Authority and Rulemaking Background

As amended by the Energy Independence and Security Act of 2007 ("EISA 2007"), Public Law 110–140 (December 19, 2007), the Energy Policy and Conservation Act ("EPCA" or, in context, "the Act") authorizes DOE to issue a direct final rule (*i.e.*, a "direct final rule") establishing an energy conservation standard for a product on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary of Energy ("Secretary"). That statement must contain recommendations with respect to an energy or water conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. A notice of proposed rulemaking ("NOPR") that proposes an identical energy efficiency standard must be published simultaneously with the direct final rule and a public comment period of at least 110 days provided. See 42 U.S.C. 6295(p)(4). This provision also applies to the equipment at issue in this direct final rule. See 42 U.S.C. 6316(b)(1) Not later than 120 days after issuance of the direct final rule, if DOE receives one or more adverse comments or an alternative joint recommendation is received relating to the direct final rule, the Secretary must determine whether the comments or alternative recommendation may provide a reasonable basis for withdrawal under 42 U.S.C. 6295(o) or other applicable law. If the Secretary makes such a determination, DOE must withdraw the direct final rule and proceed with the simultaneously-published NOPR, and publish in the **Federal Register** the reason why the direct final rule was withdrawn. *Id.*

During the rulemaking proceedings to consider amending the energy conservation standards for small, large, and very large air-cooled commercial package air conditioning and heating equipment (referred to herein as air-cooled commercial unitary air conditioners and heat pumps ("CUACs" and "CUHPs")) and commercial warm air furnaces ("CWAFs"), interested parties commented that DOE should convene a negotiated rulemaking to develop standards that will result in energy savings using technology that is feasible and economically justified. In addition, AHRI and ACEEE submitted a joint letter to the Appliance Standards and Rulemaking Federal Advisory Committee ("ASRAC") requesting that it consider approving a recommendation that DOE initiate a negotiated rulemaking for air-cooled commercial package air conditioners and commercial furnaces. (EERE–2013–BT–STD–0007–0080) ASRAC carefully evaluated this request and the Committee voted to charter a working group to support the negotiated rulemaking effort requested by these parties.

Subsequently, after careful consideration, DOE determined that, given the complexity of the CUAC/CUHP rulemaking and the logistical challenges presented by the related CWAF proposal, a combined effort to address these equipment types was necessary to ensure a comprehensive vetting of all issues and related analyses that would be necessary to support any final rule setting standards for this equipment. To this end, while highly unusual to do so after issuing a proposed rule, DOE solicited the public for membership nominations to the working group that would be formed under the ASRAC charter by issuing a Notice of Intent to Establish the Commercial Package Air Conditioners and Commercial Warm Air Furnaces Working Group To Negotiate Potential Energy Conservation Standards for Commercial Package Air Conditioners and Commercial Warm Air Furnaces. 80 FR 17363 (April 1, 2015). The CUAC/CUHP–CWAF Working Group (in context, "the Working Group") was established under ASRAC in accordance with the Federal Advisory Committee Act and the Negotiated Rulemaking Act—with the purpose of discussing and, if possible, reaching consensus on a set of energy conservation standards to propose or finalize for CUACs, CUHPs and CWAFs. The Working Group was to consist of fairly representative parties having a defined stake in the outcome of the proposed standards, and would consult, as appropriate, with a range of experts on technical issues.

DOE received 17 nominations for membership. Ultimately, the Working Group consisted of 17 members, including one member from ASRAC and one DOE representative.[1] The Working Group met six times (five times in-person and once by teleconference). The meetings were held on April 28, May 11–12, May 20–21, June 1–2, June 9–10, and June 15, 2015.[2] As a result of these efforts, the Working Group successfully reached consensus on energy conservation standards for CUACs, CUHPs, and CWAFs. On June 15, 2015, it submitted a Term Sheet to ASRAC outlining its consensus recommendations, which ASRAC subsequently adopted.[3]

After carefully considering the consensus recommendations submitted by the Working Group and adopted by ASRAC related to amending the energy conservation standards for CUACs, CUHPs, and CWAFs, DOE determined that these recommendations, which were submitted in the form of a single Term Sheet from the Working Group, comprised a statement submitted by interested persons who are fairly representative of relevant points of view on this matter. In reaching this determination, DOE took into consideration the fact that the Working Group, in conjunction with ASRAC members who approved the recommendations, consisted of representatives of manufacturers of the covered equipment at issue, States, and efficiency advocates—all of which are groups specifically identified by Congress as relevant parties to any consensus recommendation. (42 U.S.C. 6295(p)(4)(A)) As delineated above, the Term Sheet was signed and submitted by a broad cross-section of interests, including the manufacturers who produce the equipment at issue, trade associations representing these manufacturers and installation contractors, environmental and energy-efficiency advocacy organizations, and electric utility companies. Although States were not direct signatories to the Term Sheet, the ASRAC Committee approving the Working Group's recommendations included at least two members representing States—one representing the National Association of State Energy Officials ("NASEO") and one representing the State of California.[4] Moreover, DOE does not read the statute as requiring a statement submitted by all interested parties before the Department may proceed with issuance of a direct final rule. By explicit language of the statute, the Secretary has the discretion to determine when a joint recommendation for an energy or water conservation standard has met the requirement for representativeness (*i.e.*, "as determined by the Secretary").

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[1] The group members were John Cymbalsky (U.S. Department of Energy), Marshall Hunt (Pacific Gas & Electric Company, San Diego Gas & Electric Company, Southern California Edison, and Southern California Gas Company), Andrew deLaski (Appliance Standards Awareness Project), Louis Starr (Northwest Energy Efficiency Alliance), Meg Waltner (Natural Resources Defense Council), Jill Hootman (Trane), John Hurst (Lennox), Karen Meyers (Rheem Manufacturing Company), Charlie McCrudden (Air Conditioning Contractors of America), Harvey Sachs (American Council for an Energy Efficient Economy), Paul Doppel (Mitsubishi Electric), Robert Whitwell (United Technologies Corporation (Carrier)), Michael Shows (Underwriters Laboratories), Russell Tharp (Goodman Manufacturing), Sami Zendah (Emerson Climate Technologies), Mark Tezigni (Sheet Metal and Air Conditioning Contractors National Association, Inc.), Nick Mislak (Air-Conditioning, Heating, and Refrigeration Institute).

[2] In addition, most of the members of the ASRAC Working Group held several informal meetings on March 19–20, 2015, March 30, 2015, and April 13, 2015. The purpose of these meetings was to initiate work on some of the analytical issues raised in stakeholder comments on the CUAC NOPR.

[3] Available at *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0007-0093*.

Pursuant to 42 U.S.C. 6295(p)(4), the Secretary must also determine whether a jointly-submitted recommendation for an energy or water conservation standard satisfies 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. As stated in the direct final rule, in making this determination, DOE conducted an analysis to evaluate whether the potential energy conservation standards under consideration would meet these requirements. This evaluation is the same comprehensive approach that DOE typically conducts whenever it considers potential energy conservation standards for a given type of product or equipment. DOE applies the same principles to any consensus recommendations it may receive to satisfy its statutory obligation to ensure that any energy conservation standard that it adopts achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified and will result in the significant conservation of energy. Upon review, the Secretary determined that the Term Sheet submitted in the instant rulemaking comports with the standard-setting criteria set forth under 42 U.S.C. 6313(a)(6)(B). Accordingly, the consensus-recommended efficiency levels, included as the "recommended trial standard level (TSL)" for CUACs/CUHPs and as TSL 2 for CWAFs were adopted as the amended standard levels in the direct final rule. 81 FR at 2422.

In sum, as the relevant statutory criteria were satisfied, the Secretary adopted the consensus-recommended amended energy conservation standards for CUACs, CUHPs, and CWAFs set forth in the direct final rule. The standards for CUACs and CUHPs are set forth in Table 1, with the CUAC and CUHP cooling efficiency standards presented in terms of an integrated energy efficiency ratio ("IEER") and the CUHP heating efficiency standards presented as a coefficient of performance ("COP"). The IEER metric will replace the currently used energy efficiency ratio ("EER") metric on which DOE's standards are currently based. The two-phase standards and compliance dates apply to all equipment listed in Table 1 manufactured in, or imported into, the United States starting on the dates shown in that table. For CWAFs, the amended standards, which prescribe the minimum allowable thermal efficiency ("TE"), are shown in Table 2. These standards apply to all equipment listed in Table 2 manufactured in, or imported into, the United States starting on January 1, 2023. These compliance dates were set forth in the direct final rule published in the **Federal Register** on January 15, 2016 (81 FR 2420). For a detailed discussion of DOE's analysis of the benefits and burdens of the amended standards pursuant to the criteria set forth in EPCA, please refer to the relevant sections of the direct final rule. (81 FR 2420 (January 15, 2016))

As required by EPCA, DOE also simultaneously published an SNOPR proposing the identical standard levels contained in the direct final rule. DOE considered whether any adverse comment received during the 110-day comment period following the direct final rule provided a reasonable basis for withdrawal of the direct final rule and continuation of this rulemaking under the SNOPR. As noted in the direct final rule, it is the substance, rather than the quantity, of comments that will ultimately determine whether a direct final rule will be withdrawn. To this end, DOE weighs the substance of any adverse comment(s) received against the anticipated benefits of the Consensus Agreement and the likelihood that further consideration of the comment(s) would change the results of the rulemaking. DOE notes that to the extent an adverse comment had been previously raised and addressed in the rulemaking proceeding, such a submission will not typically provide a basis for withdrawal of a direct final rule.

TABLE 1—AMENDED ENERGY CONSERVATION STANDARDS FOR SMALL, LARGE, AND VERY LARGE COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT

Equipment type	Heating type	Proposed energy conservation standard	Compliance date
Small Commercial Packaged AC and HP (Air-Cooled)—≥65,000 Btu/h and <135,000 Btu/h Cooling Capacity:			
AC	Electric Resistance Heating or No Heating.	12.9 IEER	January 1, 2018.
		14.8 IEER	January 1, 2023.
	All Other Types of Heating	12.7 IEER	January 1, 2018.
		14.6 IEER	January 1, 2023.
HP	Electric Resistance Heating or No Heating.	12.2 IEER, 3.3 COP	January 1, 2018.
		14.1 IEER, 3.4 COP	January 1, 2023.
	All Other Types of Heating	12.0 IEER, 3.3 COP	January 1, 2018.
		13.9 IEER, 3.4 COP	January 1, 2023.

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[4] These individuals were Deborah E. Miller (NASEO) and David Hungerford (California Energy Commission).

TABLE 1—AMENDED ENERGY CONSERVATION STANDARDS FOR SMALL, LARGE, AND VERY LARGE COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT—Continued

Equipment type	Heating type	Proposed energy conservation standard	Compliance date
Large Commercial Packaged AC and HP (Air-Cooled)—≥135,000 Btu/h and <240,000 Btu/h Cooling Capacity:			
AC	Electric Resistance Heating or No Heating.	12.4 IEER	January 1, 2018.
		14.2 IEER	January 1, 2023.
	All Other Types of Heating	12.2 IEER	January 1, 2018.
		14.0 IEER	January 1, 2023.
HP	Electric Resistance Heating or No Heating.	11.6 IEER, 3.2 COP	January 1, 2018.
		13.5 IEER, 3.3 COP	January 1, 2023.
	All Other Types of Heating	11.4 IEER, 3.2 COP	January 1, 2018.
		13.3 IEER, 3.3 COP	January 1, 2023.
Very Large Commercial Packaged AC and HP (Air-Cooled)—≥240,000 Btu/h and <760,000 Btu/h Cooling Capacity:			
AC	Electric Resistance Heating or No Heating.	11.6 IEER	January 1, 2018.
		13.2 IEER	January 1, 2023.
	All Other Types of Heating	11.4 IEER	January 1, 2018.
		13.0 IEER	January 1, 2023.
HP	Electric Resistance Heating or No Heating.	10.6 IEER, 3.2 COP	January 1, 2018.
		12.5 IEER, 3.2 COP	January 1, 2023.
	All Other Types of Heating	10.4 IEER, 3.2 COP	January 1, 2018.
		12.3 IEER, 3.2 COP	January 1, 2023.

TABLE 2—AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL WARM AIR FURNACES

Equipment class	Input capacity* (Btu/h)	Thermal efficiency** (percent)
Gas-Fired Furnaces	≥225,000 Btu/h	81
Oil-Fired Furnaces	≥225,000 Btu/h	82

* In addition to being defined by input capacity, a CWAF is "a self-contained oil- or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air conditioning units but does not include unit heaters and duct furnaces."

** Thermal efficiency is at the maximum rated capacity (rated maximum input), and is determined using the DOE test procedure specified at 10 CFR 431.76.

II. Comments on the Direct Final Rule

The California Investor Owned Utilities ("IOUs"),[5] the Joint Efficiency Advocates,[6] and Lennox International, Inc. ("Lennox") supported the Term Sheet recommendations and DOE's adoption of the standard levels in the direct final rule. (California IOUs, No. 116 at pp. 1–3; Joint Efficiency Advocates, No. 119 at p. 1; Lennox, No. 121 at pp. 1–2)[7]

The Joint Efficiency Advocates also noted that the Term Sheet recommended that DOE initiate a test procedure rulemaking for CUACs and CUHPs by January 1, 2016 and issue a final rule by January 1, 2019, with the primary focus of the rulemaking being to better represent fan energy use. The Joint Efficiency Advocates requested that DOE give some public indication of its commencement of work on the test procedure. (Joint Efficiency Advocates, No. 119 at pp. 1–2) The California IOUs also commented that while the January 1, 2016 initiation date has passed, DOE should initiate this test procedure rulemaking as soon as possible to address fan energy use and the lack of high ambient test conditions above 95 degrees Fahrenheit (°F) to account for conditions regularly experienced in the desert Southwest. (California IOUs, No. 116 at p. 2)

DOE appreciates these comments regarding the CUAC/CUHP test procedure and is considering these potential changes to the test procedure in a future rulemaking. DOE notes that any amendments adopted in this future test procedure rulemaking would not be required for use to determine compliance with the energy conservation standards promulgated by this direct final rule.

The California IOUs commented that as DOE conducts future standards and test procedure rulemakings for these equipment, it should explore different options for standards that will improve efficiency and also contribute to peak load reduction for CUACs and CUHPs. The California IOUs stated that DOE could consider the following actions in future rulemakings: Revisiting the possibility of a dual metric for EER and IEER; an IEER test point at an ambient temperature above 95 °F; and using energy modeling software to predict equipment performance at peak conditions. (California IOUs, No. 116 at p. 3)

The Air-Conditioning, Heating, and Refrigeration Institute ("AHRI") submitted a letter committing to continue to certify and publish EER values (at 95 °F) for CUAC and CUHP equipment covered under this rulemaking in its directory of certified products once the IEER metric becomes the new Federal energy efficiency descriptor. AHRI noted that this commitment was not part of the term sheet and should not be considered as a comment to the SNOPR. (AHRI, No. 118 at p. 1) The California IOUs and Joint Efficiency Advocates both supported AHRI's commitment to continue publishing full-load EER test values, as this information is important for the design and implementation of utility incentive programs that incentivize consumers to purchase equipment that has high performance in both part load and peak load conditions. (Joint Efficiency Advocates, No. 119 at p. 2)

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[5] Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison.

[6] Appliance Standards Awareness Project, Alliance to Save Energy, American Council for an Energy-Efficient Economy, California Energy Commission, Consumer Federation of America, National Consumer Law Center, Natural Resources Defense Council, Northeast Energy Efficiency Partnerships, Northwest Energy Efficiency Alliance, and Northwest Power and Conservation Council.

[7] Comments received in regards to the direct final rule while filed in the dockets for both the CUAC/CUHP (Docket No. EERE–2013–BT–STD–0007) and CWAF (Docket No. EERE–2013–BT–STD–0021) rulemakings, are identified using the CUAC docket number.

DOE appreciates these comments regarding CUAC and CUHP full-load efficiency. DOE notes that AHRI's commitment to continuing to require verification and reporting of EER was discussed and agreed upon by interested parties during the ASRAC Working Group meetings. However, DOE noted that it could not be included as part of the Term Sheet because it was not a recommendation for a specific DOE action. (ASRAC Public Meeting, No. 102 at pp. 79–83, 113–116) DOE recognizes that AHRI's commitment to continuing to require verification and reporting of EER for its certification program would allow utilities, and others, to consider full-load efficiency in their energy efficiency programs. DOE will review its statutory authority at the time it conducts a future standards rulemaking for CUACs and CUHPs to explore options to separately consider full-load efficiency.

DOE also received two comments that discussed the market failures addressed by the direct final rule and made suggestions for actions that would complement the standards. Arthur Laciak commented that by establishing more stringent energy efficiency standards, DOE addressed the principal-agent problem (*i.e.* where a building manager purchases the equipment, but the tenants pay the energy bill), but the consumer is no better informed about the energy savings of more efficient equipment than the minimum standards. He stated that DOE should encourage Congress to provide DOE greater authority to disseminate information regarding CUACs and CUHPs to better inform consumers of the cost savings of purchasing more efficient equipment. (Laciak, No. 120 at pp. 7–8) Paul Melmeyer commented that DOE's economic analysis and justification for the updated standards are cogent and convincing, but he pointed to various ways that DOE can ensure that the direct final rule accomplishes the stated statutory and regulatory objectives. These include programs of labeling or consumer education, formulating plans to ensure low-income individuals are not adversely affected, and crafting a plan to conduct retrospective analysis on various DOE predictions. (Melmeyer, No. 122 at pp. 10–11) DOE acknowledges the suggestions made by the commenters.

III. Department of Justice Analysis of Competitive Impacts

EPCA directs DOE to consider any lessening of competition that is likely to result from new or amended standards. It also directs the Attorney General of the United States ("Attorney General") to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. See 42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii). See also 42 U.S.C. 6316(b)(1) (applying 42 U.S.C. 6295(o) to CUACs, CUHPs, and CWAFs). DOE published an SNOPR containing energy conservation standards identical to those set forth the direct final rule and transmitted a copy of the direct final rule and the accompanying technical support document ("TSD") to the Attorney General, requesting that the U.S. Department of Justice provide its determination on this issue. DOE has published DOJ's comments at the end of this notice.

DOJ reviewed the amended standards in the direct final rule and the final TSD provided by DOE. As a result of its analysis, DOJ concluded that the amended standards issued in the direct final rule are unlikely to have a significant adverse impact on competition.

IV. National Environmental Policy Act

Pursuant to the National Environmental Policy Act of 1969 ("NEPA"), DOE has determined that the rule fits within the category of actions included in Categorical Exclusion ("CX") B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and App. B, B(1)–(5). The rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this rule. DOE's CX determination for this rule is available at *http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx.*

V. Conclusion

In summary, based on the discussion above, DOE has determined that the comments received in response to the direct final rule for amended energy conservation standards for CUACs, CUHPs, and CWAFs do not provide a reasonable basis for withdrawal of the direct final rule. As a result, the amended energy conservation standards set forth in the direct final rule became effective on May 16, 2016. Compliance with these amended standards is required for small, large, and very large CUACs and CUHPs starting on January 1, 2018, for the first set of standards and January 1, 2023, for the second set of standards. Compliance with the amended standards established for CWAFs is required starting on January 1, 2023.

Issued in Washington, DC, on May 13, 2016.

David Friedman,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

Appendix

[The following letter from the Department of Justice will not appear in the Code of Federal Regulations.]

U.S. DEPARTMENT OF JUSTICE

Antitrust Division
RFK Main Justice Building 950 Pennsylvania Avenue NW., Washington, DC 20530–0001
(202) 514–2401/(202) 616–2645 (Fax)

March 15, 2016

Anne Harkavy
Deputy General Counsel for Litigation, Regulation and Enforcement, U.S. Department of Energy Washington, DC 20585

Re: Energy Conservation Standards for Small, Large, and Very Large Air-Cooled Commercial Package Air Conditioning and Heating Equipment and Commercial Warm Air Furnaces Doc. Nos. EERE–2013–BT–STD–0007 and EERE–2013–BT–STD–0021

Dear Deputy General Counsel Harkavy:

I am responding to your January 15, 2016, letter seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for certain types of commercial warm air furnace equipment, commercial air-conditioning equipment and commercial heat pump equipment. Your request was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (ECPA), 42 U.S.C. 6295(o)(2)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g).

In conducting its analysis, the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice or increasing industry concentration. A lessening of competition could result in higher prices to manufacturers and consumers.

We have reviewed the proposed standards contained in the Supplemental Notice of Proposed Rulemaking (81 FR 2111 & 2420, January 15, 2016) and the related Technical Support Documents.

Based on this review, our conclusion is that the proposed energy conservation standards for commercial warm air furnace equipment, commercial air-conditioning equipment, and commercial heat pump equipment are unlikely to have a significant adverse impact on competition.

Sincerely,

William J. Baer

[FR Doc. 2016–12279 Filed 5–23–16; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052–AD16

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This regulation implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit Administration (FCA) may impose or enforce pursuant to the Farm Credit Act of 1971, as amended (Farm Credit Act), and pursuant to the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994 (Reform Act), and further amended by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (1996 Act) and the Federal Civil Penalties Inflation Adjustment Act of 2015 (2015 Act) (collectively, 1990 Act, as amended), requires all Federal agencies with the authority to enforce CMPs to evaluate those CMPs each year to ensure that they continue to maintain their deterrent value and promote compliance with the law.

EFFECTIVE DATE: This regulation is effective on August 1, 2016.

FOR FURTHER INFORMATION CONTACT:
Michael T. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4124, TTY (703) 883–4056,
Or
Autumn Agans, Attorney-Advisor, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4082, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this regulation is to adjust the maximum CMPs for inflation with an initial "catch-up" adjustment through an interim final rulemaking (IFR) to retain the deterrent effect of such penalties.

II. Background

A. Introduction

Section 3(2) of the 1990 Act, as amended, defines a civil monetary penalty[1] as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.[2]

The FCA imposes and enforces CMPs through the Farm Credit Act and the Flood Disaster Protection Act of 1973, as amended. FCA's regulations governing CMPs are found in 12 CFR parts 622 and 623. Part 622 establishes rules of practice and procedure applicable to formal and informal hearings held before the FCA, and to formal investigations conducted under the Farm Credit Act. Part 623 prescribes rules with regard to persons who may practice before the FCA and the circumstances under which such persons may be suspended or debarred from practice before the FCA.

B. CMPs Issued Under the Farm Credit Act

The Farm Credit Act provides that any Farm Credit System (System) institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a System institution who violates the terms of a cease-and-desist order that has become final pursuant to section 5.25 or 5.26 of the Farm Credit Act must pay up to a maximum daily amount of $1,000[3] during which such violation continues. This CMP maximum was set by the Farm Credit Amendments Act of 1985, which amended the Farm Credit Act. Orders issued by the FCA under section 5.25 or 5.26 of the Farm Credit Act include temporary and permanent cease-and-desist orders. In addition, section 5.32(h) of the Farm Credit Act provides that any directive issued under sections 4.3(b)(2), 4.3A(e), or section 4.14A(i) of the Farm Credit Act "shall be treated" as a final order issued under section 5.25 of the Farm Credit Act for purposes of assessing a CMP.

Section 5.32(a) of the Farm Credit Act also states that "[a]ny such institution or person who violates any provision of the [Farm Credit] Act or any regulation issued under this Act shall forfeit and pay a civil penalty of not more than $500[4] per day for each day during which such violation continues." This CMP maximum was set by the Agricultural Credit Act of 1987, which was enacted in 1988, and amends the Farm Credit Act. Current, inflation-adjusted CMP maximums are set forth in existing § 622.61 of FCA regulations.[5]

The FCA also enforces the Flood Disaster Protection Act of 1973,[6] as amended by the National Flood Insurance Reform Act of 1994,[7] which requires FCA to assess CMPs for a pattern or practice of committing certain specific actions in violation of the National Flood Insurance Program. The existing maximum CMP for a violation under the Flood Disaster Protection Act of 1973 is $2,000.[8]

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[1] While the 1990 Act, as amended by 1996 and 2015 Acts, uses the term "civil monetary penalties" for these penalties or other sanctions, the Farm Credit Act and the FCA Regulations use the term "civil money penalties." Both terms have the same meaning. Accordingly, this rule uses the term "civil money penalty", and both terms may be used interchangeably.

[2] *See* 28 U.S.C. 2461 *note.*

[3] The inflation-adjusted CMP in effect on November 2, 2015, for a violation of a final order is $1,100 per day, as set forth in § 622.61(a)(1) of FCA regulations.

[4] The inflation-adjusted CMP in effect on November 2, 2015, for a violation of the Farm Credit Act or a regulation issued under the Farm Credit Act is $750 per day, as set forth in § 622.61(a)(2) of FCA regulations.

[5] Prior adjustments were made under the 1990 Act.

[6] 42 U.S.C. 4012a.

[7] Pub. L. 103–325, title V, 108 Stat. 2160, 2255–87 (September 23, 1994).

[8] Pub. L. 112–141, 126 Stat. 405 (July 6, 2012).

C. Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

1. In General

The 2015 Act requires all Federal agencies with authority to issue CMPs to make inflation-based adjustments to all CMPs within their jurisdictions no later than July 1, 2016. The 2015 Act also requires every Federal agency to adjust the CMPs yearly, starting January 15, 2017.

Under Section 4(b) of the 1990 Act, as amended, for the first adjustment made in accordance with the 2015 Act amendments, Federal agencies are to make a "catch up" adjustment to the civil monetary penalties through an IFR, with the adjustment taking effect no later than August 1, 2016.[9] Subsequent adjustments are to be made yearly thereafter, no later than January 15. Section 6 of the 1990 Act, as amended, states that any increase to a civil monetary penalty under this Act applies only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.

Section 5(b) of the 1990 Act, as amended, defines the term "cost-of-living adjustment" as the percentage (if any) for each civil monetary penalty by which (1) the Consumer Price Index (CPI) for the month of October of the calendar year preceding the adjustment, exceeds (2) the CPI for the month of October 1 year before the month of October referred to in (1) of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.[10]

The "catch-up" adjustment under the 2015 Act amendments requires Federal agencies to use the cost-of-living adjustment calculated by determining the percentage change (if any) for each civil monetary penalty by which the CPI for the month of October 2015 exceeds the CPI for the month of October during the calendar year in which the CMP was created or last adjusted for any reason other than pursuant to the 1996 Act. Several adjustments have been made since the Farm Credit Act established the CMP maximums. Those maximums are to be disregarded for purposes of the 2015 Act amendment initial "catch-up" adjustment calculation. However, agencies are limited to a 150-percent increase in CMPs, based upon the CMP in effect on November 2, 2015. The 150-percent limitation is on the amount of the increase; therefore, the adjusted penalty level(s) will be up to 250 percent of the level(s) in effect on November 2, 2015.[11]

The increase for each CMP adjusted for inflation must be rounded using a method prescribed by section 5(a) of the 1990 Act, as amended, by the 2015 Act.[12]

2. Other Adjustments

If a civil monetary penalty is subject to a cost-of-living adjustment under the 1990 Act, as amended, but is adjusted to an amount greater than the amount of the adjustment required under the Act within the 12 months preceding a required cost-of-living adjustment, the agency is not required to make the cost-of-living adjustment to that CMP in that calendar year.[13]

III. Catch-Up Adjustments

A. Mathematical Calculations of Catch-Up Adjustments

The adjustment requirement affects two provisions of section 5.32(a) of the Farm Credit Act. For the "catch-up" adjustments to the CMPs set forth by the Farm Credit Act, the calculation required by the 2015 Act is based on the percentage by which the CPI for October 2015 exceeds the CPIs for October 1985 and October 1988, respectively. The maximum CMPs for violations under section 5.32(a) were established in 1985 and 1988. The White House Office of Management and Budget (OMB) set forth guidance, as required by the 2015 Act,[14] with a grid of multipliers for calculating the new CMP values.[15] The OMB multiplier for the 1985 CMPs is 2.18802. The OMB multiplier for the 1988 CMPs is 1.97869.

The adjustment also affects the CMPs set by the Flood Disaster Protection Act of 1973, as amended. For the "catch-up" adjustments to the CMP set forth by the Flood Disaster Protection Act of 1973, as amended, the calculation required by the 2015 Act is based on the percentage by which the CPI for October 2012 exceeds the CPI for October 2015. The maximum CMPs for violations were created in 2012 by the Biggert-Waters Act, which amended the Flood Disaster Protection Act of 1973. The multiplier for the 2012 CMPs is 1.02819.

If any of the CMP increases exceed 150 percent of the maximums in effect as of November 2, 2015, the new maximum CMPs will reflect a simple 150-percent increase over the November 2, 2015, CMP maximums.[16]

1. New Penalty Amount in § 622.61(a)(1)

While the inflation-adjusted CMP currently in effect for violations of a final order occurring on or after November 2, 2015, is a maximum daily amount of $1,100,[17] the 2015 Act amendments require FCA to use the maximum daily amount of $1,000 to compute the catch-up adjustment as this was the amount in effect in 1985. Multiplying the $1,000 CMP by the 1985 OMB multiplier, 2.18802, yields a total of $2,188.02. When that number is rounded as required by section 5(a) of the 1990 Act, as amended the inflation-adjusted maximum increases to $2,188. The CMP in effect on November 2, 2015 was $1,100. Increasing the 2015 CMP maximum of $1,100 by 150 percent yields a CMP of $2,750. Since the new CMP maximum calculated with the 1985 OMB multiplier is less than the 150-percent maximum increase established by the 2015 Act amendments, the new CMP maximum is $2,188.

2. New Penalty Amount in § 622.61(a)(2)

While the inflation-adjusted CMP currently in effect for violations of the Farm Credit Act or regulations issued under the Farm Credit Act occurring on or after November 2, 2015, is a maximum daily amount of $750,[18] the 2015 Act amendments require FCA to use the maximum daily amount of $500 to compute the catch-up adjustment as this was the amount in effect in 1988. Multiplying the $500 CMP maximum by the 1988 OMB multiplier, 1.97869, yields a total of $989.35. When that number is rounded as required by section 5(a) of the 1990 Act, as amended the inflation-adjusted maximum increases to $989. The CMP in effect on November 2, 2015 was $750. Increasing the 2015 CMP of $750 by 150 percent yields a total of $1,875. Since the new CMP maximum calculated with the 1988 OMB multiplier is less than the 150-percent maximum increase established by the 2015 Act amendments, the new CMP maximum is $989.

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[9] Pub. L. 114–74, sec. 701(b)(1).

[10] The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its Web site: *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.*

[11] OMB Circular M–16–06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

[12] Per section 5(a)(3) of the 2015 Act, any increase determined under the subsection shall be rounded to the nearest $1.

[13] Per section 4(d) of the 1990 Act, as amended.

[14] 28 U.S.C. 2461 *note,* section 7(a).

[15] OMB Circular M–16–06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

[16] The 150-percent limitation is on the amount of the increase; therefore, the adjusted penalty level(s) will be up to 250 percent of the level(s) in effect on November 2, 2015. OMB Circular, M–16–06.

[17] 12 CFR 622.61(a)(1).

[18] 12 CFR 622.61(a)(2).

3. New Penalty Amounts for Flood Insurance Violations Under § 622.61(b)

The existing maximum CMP for a pattern or practice of flood insurance violations pursuant to 42 U.S.C. 4012a(f)(5) is $2,000. Multiplying $2,000 by the 2012 OMB multiplier, 1.02819, yields a total of $2,056.38. When that number is rounded as required by section 5(a) of the 1990 Act, as amended, the new maximum assessment of the CMP for violating 42 U.S.C. 4012a(f)(5) is $2,056. The CMP in effect on November 2, 2015 was $2,000. Increasing the 2015 CMP of $2,000 by 150 percent yields $5,000. Since the new CMP maximum calculated with the OMB multiplier is lower than the 150-percent maximum increase established by the 2015 Act amendments, the new CMP maximum is $2,056.

IV. Notice and Comment Not Required by Administrative Procedure Act

The 1990 Act, as amended, gives Federal agencies no discretion in the adjustment of CMPs for the rate of inflation. Further, these revisions are ministerial, technical, and noncontroversial. For these reasons, the FCA finds good cause to determine that public notice and an opportunity to comment are impracticable, unnecessary, and contrary to the public interest pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), and adopts this rule in final form.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 622

Administrative practice and procedure, Crime, Investigations, Penalties.

For the reasons stated in the preamble, part 622 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 622—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 622 continues to read as follows:

Authority: Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273); 28 U.S.C. 2461 *note;* and 42 U.S.C. 4012a(f).

■ 2. Revise § 622.61 to read as follows:

§ 622.61 Adjustment of civil money penalties by the rate of inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(a) The maximum amount of each civil money penalty within FCA's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 *note*), as follows:

(1) Amount of civil money penalty imposed under section 5.32 of the Act for violation of a final order issued under section 5.25 or 5.26 of the Act: The maximum daily amount is $2,188 for violations that occur on or after August 1, 2016.

(2) Amount of civil money penalty for violation of the Act or regulations: The maximum daily amount is $989 for each violation that occurs on or after August 1, 2016.

(b) The maximum civil money penalty amount assessed under 42 U.S.C. 4012a(f) is: $385 for each violation that occurs on or after January 16, 2009, but before July 1, 2013, with total penalties under such statute not to exceed $120,000 for any single institution during any calendar year; $2,000 for each violation that occurs on or after July 1, 2013, but before August 1, 2016, with no cap on the total amount of penalties that can be assessed against any single institution during any calendar year; and $2,056 for each violation that occurs on or after August 1, 2016, with no cap on the total amount of penalties that can be assessed against any single institution during any calendar year.

Dated: May 16, 2016.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2016–11862 Filed 5–23–16; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

[Docket No. SBA–2016–0004]

Small Business Size Standards

AGENCY: U.S. Small Business Administration.

ACTION: Statement of General Policy, SBA Size Policy Statement No. 3.

SUMMARY: The Small Business Administration (SBA) hereby gives notice of its intended application and interpretation of the interaffiliate transactions exclusion from annual receipts set forth in its Small Business Size Regulations. Effective at the issuance of this notice, SBA will apply the exclusion to properly documented transactions between a concern and its domestic or foreign affiliates, regardless of the type of relationship that resulted in the finding of affiliation.

DATES:

Effective Date: This Policy Statement is effective May 24, 2016.

Comment Date: Comments must be received on or before July 25, 2016.

ADDRESSES: You may submit comments, identified by Docket No. SBA–2016–0004 by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Brenda Fernandez, U.S. Small Business Administration, Office of Government Contracting, 409 3rd Street SW., 8th Floor, Washington, DC 20416.

SBA will post all comments on *http://www.Regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.Regulations.gov,* please submit the information to Brenda Fernandez, U.S. Small Business Administration, Office of Government Contracting, 409 3rd Street SW., 8th Floor, Washington, DC 20416, and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination of whether the information will be published or not.

FOR FURTHER INFORMATION CONTACT: Brenda Fernandez, U.S. Small Business Administration, Office of Government Contracting, 409 3rd Street SW., 8th Floor, Washington, DC 20416; (202) 205–7337; *brenda.fernandez@sba.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 13 CFR 121.104(d), the average annual receipts size of a business concern with affiliates is calculated by adding the average annual receipts of the business concern with the average annual receipts of each affiliate. However, in adding the receipts of a concern with its affiliate, SBA excludes "proceeds from transactions between a concern and its domestic or foreign affiliates,'' under 13 CFR 121.104(a). These transactions are commonly referred to as interaffiliate transactions. The intent of this exclusion is to avoid counting the same receipts twice when determining the size of a particular concern. This Statement of Policy explains how SBA will apply the exclusion.

Recent SBA size determinations and decisions of the Office of Hearings and Appeals have limited the exclusion by applying it only to transactions between affiliates that are eligible to file a consolidated tax return. This interpretation has been supported by reference to a parenthetical that was included with section 121.104(a) from 1996 to 2004, providing that the exclusion would apply to interaffiliate amounts ''(if also excluded from gross or total income on a consolidated return filed with the IRS). . . .'' 13 CFR 121.104(a)(1) (1996); 61 FR 3280 (Jan. 31, 1996). While this parenthetical was in place, SBA excluded only those interaffiliate transactions that were also excluded from consolidated tax returns filed by a concern and its affiliate. This policy necessarily required that the transaction occur between two firms that filed consolidated returns.

SBA deleted the parenthetical in 2004. In the preamble to the final rule issued May 21, 2004, SBA stated that it was deleting the parenthetical because ''[w]hether a consolidated return is filed should have no bearing on whether properly documented interaffiliate transactions are excluded from annual receipts.'' 69 FR 29192, 29196 (May 21, 2004). Thus, since May 2004, the regulation has provided for an exclusion from receipts for ''proceeds from transactions between a concern and its domestic or foreign affiliates.'' 13 CFR 121.104(a). The regulation does not include a limitation on the types of affiliates for which interaffiliate transactions can be excluded, and in no way ties the exclusion to a concern's ability to file a consolidated tax return with the identified affiliate.

SBA believes that the current regulatory language is clear on its face. It specifically excludes all proceeds from transactions between a concern and its affiliates, without limitation. Moreover, the regulatory history supports the position that the exclusion for interaffiliate transactions is available regardless of the manner of affiliation between a concern and its affiliate. SBA recognized that excluding interaffiliate transactions only when they are identified on a consolidated tax return often perpetuated the double-counting of receipts. By saying that ''[w]hether a consolidated return is filed should have no bearing on whether properly documented interaffiliate transactions are excluded from annual receipts,'' SBA did not mean to imply that a concern and its affiliate must be able to file a consolidated tax return in order to receive the exclusion from double-counting interaffiliate transactions. Conversely, SBA was attempting to make clear that it did not support the practice of double-counting receipts between affiliates generally.

Because the regulatory text does not contain a restriction, a regulatory change is not necessary. SBA will consider comments submitted regarding this policy.

Statement of Policy

SBA will not restrict the exclusion for interaffiliate transactions to transactions between a concern and a firm with which it could file a consolidated tax return. The exclusion for interaffiliate transactions may be applied to interaffiliate transactions between a concern and a firm with which it is affiliated under the principles in 13 CFR 121.103. Where SBA is conducting a size determination, SBA requires that exclusions claimed under section 121.104(a) be specifically identified by the concern whose size is at issue and be properly documented. This policy is effective immediately.

Dated: May 18, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–12260 Filed 5–23–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2008–0221]

Change of Newark Liberty International Airport (EWR) Designation; Notification of Availability of Final CATEX Declaration and Supporting Material

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of availability.

SUMMARY: This action announces the placement in the docket of the final documented categorical exclusion (the signed CATEX declaration and final Attachment A: *Environmental Review of Proposed Change of Operating Authorization Requirement at Newark Liberty International Airport*) for the redesignation of Newark Liberty International Airport (EWR) as a Level 2 schedule-facilitated airport.

DATES: May 24, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–6462; email *susan.pfingstler@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 6, 2016, the FAA published the ''Change of Newark Liberty International Airport (EWR) Designation'' document in order to redesignate Newark Liberty International Airport as a Level 2 schedule-facilitated airport under the International Air Transport Association Worldwide Slot Guidelines effective for the winter 2016 scheduling season, which begins on October 30, 2016.[1]

On April 5, 2016, the FAA posted a copy of a draft of Env Rev Attach A in the docket associated with the April 6, 2016 document. The FAA has corrected this action by posting the final CATEX documents (the signed CATEX declaration and final Attachment A*: Environmental Review of Proposed Change of Operating Authorization Requirement at Newark Liberty International Airport*) to the docket.

Issued in Washington, DC, on May 18, 2016.

Lorelei Peter,

Assistant Chief Counsel for Regulations.

[FR Doc. 2016–12252 Filed 5–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2007–29320]

Operating Limitations at John F. Kennedy International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension to Order.

SUMMARY: This action extends the Order Limiting Operations at John F. Kennedy International Airport (JFK) published on January 18, 2008, and most recently extended March 26, 2014. The Order remains effective until October 27, 2018.

DATES: This action is effective on May 24, 2016.

ADDRESSES: Requests may be submitted by mail to Slot Administration Office,

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[1] 81 FR 19861.

AGC–240, Office of the Chief Counsel, 800 Independence Avenue SW., Washington, DC 20591, or by email to: *7-awa-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: For questions concerning this Order contact: Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–6462; email *susan.pfingstler@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You may obtain an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You also may obtain a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Background

From 1968, the FAA limited the number of arrivals and departures at JFK during the peak afternoon demand period (corresponding to transatlantic arrival and departure banks) through the implementation of the High Density Rule (HDR).[1] By statute enacted in April 2000, the HDR's applicability to JFK operations terminated as of January 1, 2007.[2] Using AIR–21 exemptions and the HDR phase-out, U.S. air carriers serving JFK significantly increased their domestic scheduled operations throughout the day. This increase in operations resulted in significant congestion and delays that negatively impacted the National Airspace System (NAS). In January 2008, the FAA placed temporary limits on scheduled operations at JFK to mitigate persistent congestion and delays at the airport.[3] With a temporary schedule limit order in place, the FAA proposed a long-term rule that would limit the number of scheduled and unscheduled operations at JFK.[4] On October 10, 2008, the FAA published the Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport, which would have become effective on December 9, 2008.[5] That rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit and subsequently rescinded by the FAA.[6] The FAA extended the January 18, 2008, Order placing temporary limits on scheduled operations at JFK on October 7, 2009,[7] on April 4, 2011,[8] on May 14, 2013,[9] and on March 26, 2014.[10]

Under the Order, as amended, the FAA (1) maintains the current hourly limits on 81 scheduled operations at JFK during the peak period; (2) imposes an 80 percent minimum usage requirement for Operating Authorizations (OAs) with defined exceptions; (3) provides a mechanism for withdrawal of OAs for FAA operational reasons; (4) establishes procedures to allocate withdrawn, surrendered, or unallocated OAs; and (5) allows for trades and leases of OAs for consideration for the duration of the Order.

The reasons for issuing the Order have not changed appreciably since it was implemented. Demand for access to JFK remains high and the average weekday hourly flights in the busiest morning, afternoon, and evening hours are generally consistent with the limits under this Order. The FAA has reviewed the on-time and other performance metrics in the peak May to August 2014 and 2015 months and found continuing improvements relative to the same period in 2007, even with runway construction at JFK in 2015.[11] Without the operational limitations imposed by this Order, the FAA expects severe congestion-related delays would occur at JFK and at other airports throughout the NAS. The FAA will continue to monitor performance and runway capacity at JFK to determine if changes are warranted.

On January 8, 2015, the DOT and FAA published a notice of proposed rulemaking "Slot Management and Transparency at LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport."[12] The DOT and FAA proposed to replace the Orders limiting scheduled operations at JFK, limiting scheduled operations at Newark Liberty International Airport (EWR), and limiting scheduled and unscheduled operations at LaGuardia Airport (LGA) with a more permanent system for managing slots. The NPRM included certain proposed changes to how slots are currently managed in the New York City area in order to increase transparency and address issues considering anti-competitive behavior. Since the FAA and DOT first initiated this rulemaking effort there have been significant changes in circumstances affecting New York City area airports, including changes in competitive effects from ongoing industry consolidation, slot utilization and transfer behavior, and actual operational performance at the three airports. Furthermore, the FAA recently announced that slot controls are no longer needed at EWR (81 FR 19861). In light of the changes in market conditions and operational performance at the New York City area airports, the Department is withdrawing the NPRM by **Federal Register** notice published May 16, 2016 (81 FR 30218), to allow for further evaluation of these changes. Accordingly, the FAA has concluded it is necessary to extend the expiration date of this Order until October 27, 2018. This expiration date coincides with the extended expiration date for the Order limiting scheduled operations at LGA, as also extended by action published in today's **Federal Register.**[13] No amendments other than the expiration date have been made to this Order.

The FAA finds that notice and comment procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. The FAA further finds that good cause exists to make this Order effective in less than 30 days.

The Amended Order

The Order, as amended, is recited below in its entirety.

1. This Order assigns operating authority to conduct an arrival or a departure at JFK during the affected hours to the U.S. air carrier or foreign air carrier identified in the appendix to this Order. The FAA will not assign

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[1] 33 FR 17896 (Dec. 3, 1968). The FAA codified the rules for operating at high density traffic airports in 14 CFR part 93, subpart K. The HDR required carriers to hold a reservation, which came to be known as a "slot," for each takeoff or landing under instrument flight rules at the high density traffic airports.

[2] Aviation Investment and Reform Act for the 21st Century (AIR–21), Public Law 106–181 (Apr. 5, 2000), 49 U.S.C. 41715(a)(2).

[3] 73 FR 3510 (Jan. 18, 2008), as amended by 73 FR 8737 (Feb. 14, 2008).

[4] 73 FR 29626 (May 21, 2008); Docket FAA–2008–0517.

[5] 73 FR 60544, amended by 73 FR 66516 (Nov. 10, 2008).

[6] 74 FR 52134 (Oct. 9, 2009).

[7] 74 FR 51650.

[8] 76 FR 18620.

[9] 78 FR 28276.

[10] 79FR 16854.

[11] Docket No. FAA–2007–25320 includes a copy of the MITRE analysis completed for the FAA.

[12] 80 FR 1274.

[13] The FAA notes that the Order limiting scheduled operations at EWR will expire October 29, 2016; beginning on October 30, 2016, EWR is designated a Level 2 schedule-facilitated airport consistent with the FAA's action published in the **Federal Register** on April 6, 2016. *See id.*

operating authority under this Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority and FAA operating authority under 14 CFR part 121, 129, or 135. This Order applies to the following:

a. All U.S. air carriers and foreign air carriers conducting scheduled operations at JFK as of the date of this Order, any U.S. air carrier or foreign air carrier that operates under the same designator code as such a carrier, and any air carrier or foreign-flag carrier that has or enters into a codeshare agreement with such a carrier.

b. All U.S. air carriers or foreign air carriers initiating scheduled or regularly conducted commercial service to JFK while this Order is in effect.

c. The Chief Counsel of the FAA, in consultation with the Vice President, System Operations Services, is the final decisionmaker for determinations under this Order.

2. This Order governs scheduled arrivals and departures at JFK from 6 a.m. through 10:59 p.m., Eastern Time, Sunday through Saturday.

3. This Order takes effect on March 30, 2008, and will expire when the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 29, 2016.

4. Under the authority provided to the Secretary of Transportation and the FAA Administrator by 49 U.S.C. 40101, 40103 and 40113, we hereby order that:

a. No U.S. air carrier or foreign air carrier initiating or conducting scheduled or regularly conducted commercial service at JFK may conduct such operations without an Operating Authorization assigned by the FAA.

b. Except as provided in the appendix to this Order, scheduled U.S. air carrier and foreign air carrier arrivals and departures will not exceed 81 per hour from 6 a.m. through 10:59 p.m., Eastern Time.

c. The Administrator may change the limits if he determines that capacity exists to accommodate additional operations without a significant increase in delays.

5. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

6. A carrier holding an Operating Authorization may request the Administrator's approval to move any arrival or departure scheduled from 6 a.m. through 10:59 p.m. to another half hour within that period. Except as provided in paragraph seven, the carrier must receive the written approval of the Administrator, or his delegate, prior to conducting any scheduled arrival or departure that is not listed in the appendix to this Order. All requests to move an allocated Operating Authorization must be submitted to the FAA Slot Administration Office, facsimile (202) 267–7277 or email *7-AWA-Slotadmin@faa.gov,* and must come from a designated representative of the carrier. If the FAA cannot approve a carrier's request to move a scheduled arrival or departure, the carrier may then apply for a trade in accordance with paragraph seven.

7. For the duration of this Order, a carrier may enter into a lease or trade of an Operating Authorization to another carrier for any consideration. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or email *7-AWASlotadmin@faa.gov,* and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. The FAA will approve transfers between carriers under the same marketing control up to five business days after the actual operation, but only to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA's approval of a trade or lease does not constitute a commitment by the FAA to grant the associated historical rights to any operator in the event that slot controls continue at JFK after this order expires.

8. A carrier may not buy, sell, trade, or transfer an Operating Authorization, except as described in paragraph seven.

9. Historical rights to Operating Authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season.

a. For each day of the week that the FAA has approved an operating schedule, any Operating Authorization not used at least 80% of the time over the time-frame authorized by the FAA under this paragraph will be withdrawn by the FAA for the next applicable season except:

i. The FAA will treat as used any Operating Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

ii. The Administrator of the FAA may waive the 80% usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which affects carrier operations for a period of five consecutive days or more.

b. Each carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations and:

i. The dates within each applicable season it intends to commence and complete operations.

A. For each winter scheduling season, the report must be received by the FAA no later than August 15 during the preceding summer.

B. For each summer scheduling season, the report must be received by the FAA no later than January 15 during the preceding winter.

ii. The completed operations for each day of the applicable scheduling season:

A. No later than September 1 for the summer scheduling season.

B. No later than January 15 for the winter scheduling season.

iii. The completed operations for each day of the scheduling season within 30 days after the last day of the applicable scheduling season.

10. In the event that a carrier surrenders to the FAA any Operating Authorization assigned to it under this Order or if there are unallocated Operating Authorizations, the FAA will determine whether the Operating Authorizations should be reallocated. The FAA may temporarily allocate an Operating Authorization at its discretion. Such temporary allocations will not be entitled to historical status for the next applicable scheduling season under paragraph 9.

11. If the FAA determines that an involuntary reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled service at JFK.

12. The FAA will enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). A carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, will be liable for a civil penalty of up to $25,000 for every day

that it violates the limits set forth in this Order. A carrier that is a small business as defined in the Small Business Act will be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in this Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of this Order.

13. The FAA may modify or withdraw any provision in this Order on its own or on application by any carrier for good cause shown.

Issued in Washington, DC on May 18, 2016.

Daniel E. Smiley,

Vice President, System Operations Services.

[FR Doc. 2016–12221 Filed 5–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31073; Amdt. No. 3693]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 24, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 24, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on April 22, 2016.

John S. Duncan,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

* * * *Effective 26 MAY 2016*

Aniak, AK, Aniak, ILS/DME RWY 10, Amdt 7E, CANCELED
Aniak, AK, Aniak, ILS OR LOC RWY 11, Orig
Aniak, AK, Aniak, LOC/DME RWY 10, Amdt 3D, CANCELED
Aniak, AK, Aniak, NDB/DME RWY 29, Amdt 4
Aniak, AK, Aniak, RNAV (GPS) RWY 11, Amdt 1
Aniak, AK, Aniak, RNAV (GPS) RWY 29, Amdt 2
Aniak, AK, Aniak, Takeoff Minimums and ODP, Amdt 3
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 24L, Amdt 26C
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 24L, Amdt 4
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 24L, Amdt 1D
Ontario, CA, Ontario Intl, ILS OR LOC RWY 8L, Amdt 9B
Ontario, CA, Ontario Intl, ILS OR LOC RWY 26R, Amdt 4A
Ontario, CA, Ontario Intl, RNAV (GPS) RWY 8R, Amdt 1C
Ontario, CA, Ontario Intl, RNAV (GPS) Y RWY 8L, Amdt 1D
Ontario, CA, Ontario Intl, RNAV (GPS) Y RWY 26L, Amdt 1B
Ontario, CA, Ontario Intl, RNAV (GPS) Y RWY 26R, Amdt 1B
Ontario, CA, Ontario Intl, RNAV (RNP) Z RWY 8L, Orig-D
Ontario, CA, Ontario Intl, RNAV (RNP) Z RWY 26L, Orig-D
Ontario, CA, Ontario Intl, RNAV (RNP) Z RWY 26R, Orig-D
Ontario, CA, Ontario Intl, Takeoff Minimums and Obstacle DP, Amdt 9
Pagosa Springs, CO, Stevens Field, RNAV (GPS) RWY 1, Orig
Pagosa Springs, CO, Stevens Field, RNAV (GPS)-A, Amdt 1, CANCELED
Tallahassee, FL, Tallahassee Intl, RNAV (GPS) RWY 18, Amdt 2
Tallahassee, FL, Tallahassee Intl, RNAV (GPS) RWY 36, Amdt 2
Pohnpei Island, FM, Pohnpei Intl, RNAV (RNP) Y RWY 9, Amdt 1
Pohnpei Island, FM, Pohnpei Intl, RNAV (RNP) Z RWY 9, Amdt 1
Metter, GA, Metter Muni, RNAV (GPS) RWY 10, Amdt 1
Metter, GA, Metter Muni, RNAV (GPS) RWY 28, Amdt 1
Sioux City, IA, Sioux Gateway/Col Bud Day Field, ILS OR LOC RWY 13, Amdt 2C
Sioux City, IA, Sioux Gateway/Col Bud Day Field, ILS OR LOC RWY 31, Amdt 25D
Sioux City, IA, Sioux Gateway/Col Bud Day Field, RNAV (GPS) RWY 13, Orig-D
Sioux City, IA, Sioux Gateway/Col Bud Day Field, RNAV (GPS) RWY 17, Amdt 1
Sioux City, IA, Sioux Gateway/Col Bud Day Field, RNAV (GPS) RWY 31, Orig-D
Sioux City, IA, Sioux Gateway/Col Bud Day Field, RNAV (GPS) RWY 35, Orig
Sioux City, IA, Sioux Gateway/Col Bud Day Field, Takeoff Minimums and Obstacle DP, Amdt 3A
Belleville, IL, Scott AFB/MidAmerica, ILS OR LOC RWY 14L, Orig-G
Belleville, IL, Scott AFB/MidAmerica, ILS OR LOC RWY 14R, Orig-F
Belleville, IL, Scott AFB/MidAmerica, ILS OR LOC RWY 32R, Orig-H
Belleville, IL, Scott AFB/MidAmerica, ILS OR LOC/DME RWY 32L, Amdt 2
Belleville, IL, Scott AFB/MidAmerica, RADAR–1, Orig
Belleville, IL, Scott AFB/MidAmerica, RNAV (GPS) RWY 14L, Orig-A
Belleville, IL, Scott AFB/MidAmerica, RNAV (GPS) RWY 14R, Orig-E
Belleville, IL, Scott AFB/MidAmerica, RNAV (GPS) RWY 32L, Orig-E
Belleville, IL, Scott AFB/MidAmerica, RNAV (GPS) RWY 32R, Orig-C
Belleville, IL, Scott AFB/MidAmerica, TACAN RWY 14R, Amdt 1B
Belleville, IL, Scott AFB/MidAmerica, TACAN RWY 32L, Amdt 1B
Belleville, IL, Scott AFB/MidAmerica, TACAN–A, Orig
Terre Haute, IN, Sky King, RNAV (GPS)-A, Orig
Terre Haute, IN, Sky King, Takeoff Minimums and Obstacle DP, Amdt 4
Caro, MI, Tuscola Area, RNAV (GPS) RWY 6, Amdt 1
Caro, MI, Tuscola Area, RNAV (GPS) RWY 24, Amdt 1
Caro, MI, Tuscola Area, Takeoff Minimums and Obstacle DP, Amdt 2
Caro, MI, Tuscola Area, VOR/DME–A, Amdt 6
Forsyth, MT, Tillitt Field, NDB RWY 27, Amdt 5
Forsyth, MT, Tillitt Field, RNAV (GPS) RWY 27, Amdt 2
Forsyth, MT, Tillitt Field, Takeoff Minimums and Obstacle DP, Amdt 1
Miles City, MT, Frank Wiley Field, RNAV (GPS) RWY 4, Amdt 3
Miles City, MT, Frank Wiley Field, RNAV (GPS) RWY 13, Orig
Miles City, MT, Frank Wiley Field, RNAV (GPS) RWY 22, Amdt 1
Miles City, MT, Frank Wiley Field, RNAV (GPS) RWY 31, Orig
Miles City, MT, Frank Wiley Field, Takeoff Minimums and Obstacle DP, Amdt 1
Miles City, MT, Frank Wiley Field, VOR RWY 4, Amdt 13
Miles City, MT, Frank Wiley Field, VOR/DME RWY 22, Amdt 9
Minot, ND, Minot Intl, LOC/DME BC RWY 13, Amdt 8A
Newport, NH, Parlin Field, RNAV (GPS)-A, Orig
Newport, NH, Parlin Field, Takeoff Minimums and Obstacle DP, Orig
Caldwell, NJ, Essex County, LOC RWY 22, Amdt 4
Caldwell, NJ, Essex County, RNAV (GPS) RWY 22, Amdt 2
Moriarty, NM, Moriarty, RNAV (GPS) RWY 8, Orig
Moriarty, NM, Moriarty, RNAV (GPS) RWY 26, Orig
Moriarty, NM, Moriarty, Takeoff Minimums and Obstacle DP, Orig
Elko, NV, Elko Rgnl, GPS RWY 5, Orig, CANCELED
Elko, NV, Elko Rgnl, LDA/DME RWY 24, Amdt 6
Elko, NV, Elko Rgnl, RNAV (GPS) RWY 6, Orig
Elko, NV, Elko Rgnl, RNAV (GPS) RWY 24, Amdt 1
Elko, NV, Elko Rgnl, Takeoff Minimums and Obstacle DP, Amdt 6
Elko, NV, Elko Rgnl, VOR–A, Amdt 6
Elko, NV, Elko Rgnl, VOR/DME–B, Amdt 5
Reno, NV, Reno/Tahoe Intl, ILS RWY 16R, Amdt 10F, CANCELED
Reno, NV, Reno/Tahoe Intl, ILS X OR LOC X RWY 16R, Orig
Reno, NV, Reno/Tahoe Intl, ILS Y RWY 16R, Orig
Reno, NV, Reno/Tahoe Intl, ILS Z OR LOC Z RWY 16R, Orig
Reno, NV, Reno/Tahoe Intl, LOC RWY 16R, Amdt 7, CANCELED
Reno, NV, Reno/Tahoe Intl, LOC Y RWY 16R, Orig
White Plains, NY, Westchester County, ILS OR LOC RWY 16, ILS RWY 16 (SA CAT I), ILS RWY 16 (CAT II), Amdt 25A

Dayton, OH, James M Cox Dayton Intl, ILS OR LOC RWY 6L, ILS RWY 6L (CAT II), ILS RWY 6L (CAT III), Amdt 10
Dayton, OH, James M Cox Dayton Intl, ILS OR LOC RWY 24L, Amdt 10
Dayton, OH, James M Cox Dayton Intl, ILS OR LOC RWY 24R, Amdt 10
Dayton, OH, James M Cox Dayton Intl, RNAV (GPS) Z RWY 24R, Amdt 2
Fostoria, OH, Fostoria Metropolitan, NDB RWY 27, Amdt 5A, CANCELED
Norman, OK, University of Oklahoma Westheimer, ILS OR LOC RWY 18, Amdt 2
Norman, OK, University of Oklahoma Westheimer, LOC RWY 3, Amdt 4
Norman, OK, University of Oklahoma Westheimer, RNAV (GPS) RWY 3, Amdt 2B
Norman, OK, University of Oklahoma Westheimer, RNAV (GPS) RWY 18, Amdt 2
Norman, OK, University of Oklahoma Westheimer, RNAV (GPS) RWY 36, Orig-B
Oklahoma City, OK, Sundance Airpark, LOC RWY 17, Orig-F, CANCELED
Tipton, OK, Tipton Muni, GPS RWY 17, Orig-A, CANCELED
Tipton, OK, Tipton Muni, VOR/DME RWY 17, Orig-B, CANCELED
Tulsa, OK, Richard Lloyd Jones Jr, RNAV (GPS) RWY 19R, Orig
Klamath Falls, OR, Crater Lake-Klamath Rgnl, HI ILS OR LOC RWY 32, Amdt 6
Klamath Falls, OR, Crater Lake-Klamath Rgnl, HI TACAN RWY 14, Amdt 3A
Klamath Falls, OR, Crater Lake-Klamath Rgnl, HI TACAN RWY 32, Amdt 5
Erie, PA, Erie Intl/Tom Ridge Field, ILS OR LOC RWY 6, Amdt 18
Erie, PA, Erie Intl/Tom Ridge Field, ILS OR LOC RWY 24, Amdt 10
Erie, PA, Erie Intl/Tom Ridge Field, NDB RWY 6, Amdt 2, CANCELED
Erie, PA, Erie Intl/Tom Ridge Field, NDB RWY 24, Amdt 20
Hazleton, PA, Hazleton Rgnl, RNAV (GPS) RWY 10, Amdt 2
Hazleton, PA, Hazleton Rgnl, RNAV (GPS) RWY 28, Amdt 1
Martin, SD, Martin Muni, GPS RWY 32, Orig-C, CANCELED
Martin, SD, Martin Muni, RNAV (GPS) RWY 32, Orig
Martin, SD, Martin Muni, Takeoff Minimums and Obstacle DP, Orig
Beaumont/Port Arthur, TX, Jack Brooks Rgnl, VOR–A, Amdt 6B, CANCELED
Beaumont/Port Arthur, TX, Jack Brooks Rgnl, VOR–B, Amdt 6B, CANCELED
Beaumont/Port Arthur, TX, Jack Brooks Rgnl, VOR–C, Amdt 5B, CANCELED
Beaumont/Port Arthur, TX, Jack Brooks Rgnl, VOR/DME–D, Amdt 2A, CANCELED
Corpus Christi, TX, Corpus Christi Intl, ILS OR LOC RWY 13, Amdt 28
Corpus Christi, TX, Corpus Christi Intl, LOC RWY 31, Amdt 9
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) X RWY 31, Orig
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) Y RWY 13, Amdt 2
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) Y RWY 31, Amdt 4
Corpus Christi, TX, Corpus Christi Intl, RNAV (RNP) Z RWY 13, Amdt 1
Corpus Christi, TX, Corpus Christi Intl, RNAV (RNP) Z RWY 31, Amdt 1
Corpus Christi, TX, Corpus Christi Intl, Takeoff Minimums and Obstacle DP, Amdt 3
Mineola, TX, Mineola Wisener Field, VOR–A, Amdt 6
Terrell, TX, Terrell Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Cheyenne, WY, Cheyenne Rgnl/Jerry Olson Field, ILS OR LOC RWY 27, Amdt 35
Cheyenne, WY, Cheyenne Rgnl/Jerry Olson Field, NDB RWY 27, Amdt 15A, CANCELED

RESCINDED: On March 24, 2016 (81 FR 15630), the FAA published an Amendment in Docket No. 31067, Amdt No. 3687, to Part 97 of the Federal Aviation Regulations, under section 97.20 and 97.33. The following entries for Morris, IL effective May 26, 2016, are hereby rescinded in their entirety:

Morris, IL, Morris Muni—James R Washburn Field, RNAV (GPS) RWY 18, Amdt 1
Morris, IL, Morris Muni—James R Washburn Field, RNAV (GPS) RWY 36, Amdt 2
Morris, IL, Morris Muni—James R Washburn Field, Takeoff Minimums and Obstacle DP, Amdt 1

[FR Doc. 2016–11955 Filed 5–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31074 Amdt. No. 3694]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 24, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 24, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on April 22, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ § 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
26–May–16	TX	Terrell	Terrell Muni	6/0884	04/01/16	This NOTAM, published in TL 16–11, is hereby rescinded in its entirety.
26–May–16	AK	Venetie	Venetie	5/0233	04/12/16	RNAV (GPS) RWY 22, Orig.
26–May–16	AK	Venetie	Venetie	5/0234	04/12/16	RNAV (GPS) RWY 4, Orig-A.
26–May–16	OK	Tulsa	Richard Lloyd Jones Jr	5/1074	04/07/16	VOR RWY 1L, Amdt 4C.
26–May–16	OK	Tulsa	Richard Lloyd Jones Jr	5/1075	04/07/16	ILS OR LOC RWY 1L, Amdt 1A.
26–May–16	OH	Toledo	Toledo Executive	5/2079	04/07/16	RNAV (GPS) RWY 32, Orig-A.
26–May–16	WI	Antigo	Langlade County	5/4644	04/07/16	RNAV (GPS) RWY 35, Amdt 2A.
26–May–16	MQ	Midway Atoll	Henderson Field	6/0076	03/23/16	RNAV (GPS) RWY 6, Orig-B.
26–May–16	MQ	Midway Atoll	Henderson Field	6/0077	03/23/16	RNAV (GPS) RWY 24, Orig-B.
26–May–16	MQ	Midway Atoll	Henderson Field	6/0078	03/23/16	NDB RWY 6, Orig-A.
26–May–16	MQ	Midway Atoll	Henderson Field	6/0079	03/23/16	NDB RWY 24, Orig-A.
26–May–16	UT	St George ...	St George Rgnl	6/2270	04/01/16	LDA/DME RWY 19, Orig-B.
26–May–16	UT	St George ...	St George Rgnl	6/2271	04/01/16	RNAV (GPS) RWY 1, Orig-B.
26–May–16	UT	St George ...	St George Rgnl	6/2272	04/01/16	RNAV (GPS) RWY 19, Orig-B.
26–May–16	UT	St George ...	St George Rgnl	6/2273	04/01/16	VOR/DME–A, Orig.
26–May–16	UT	St George ...	St George Rgnl	6/2274	04/01/16	Takeoff Minimums and (Obstacle) DP, Orig.
26–May–16	PA	Punxsutawney.	Punxsutawney Muni	6/3333	04/07/16	VOR/DME–A, Amdt 1A.
26–May–16	PA	Punxsutawney.	Punxsutawney Muni	6/3341	04/07/16	RNAV (GPS) RWY 24, Orig-A.
26–May–16	CA	Arcata/Eureka.	Arcata	6/3943	04/07/16	VOR/DME RWY 14, Amdt 1A.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
26–May–16	ME	Norridgewock.	Central Maine Arpt Of Norridgewock.	6/6681	04/07/16	RNAV (GPS) RWY 15, Orig.
26–May–16	ME	Auburn/Lewiston.	Auburn/Lewiston Muni	6/6781	04/07/16	ILS OR LOC RWY 4, Amdt 10D.
26–May–16	ME	Auburn/Lewiston.	Auburn/Lewiston Muni	6/6782	04/07/16	RNAV (GPS) RWY 4, Amdt 1.
26–May–16	ME	Auburn/Lewiston.	Auburn/Lewiston Muni	6/6783	04/07/16	RNAV (GPS) RWY 22, Amdt 1A.
26–May–16	IA	Muscatine ...	Muscatine Muni	6/7375	04/12/16	RNAV (GPS) RWY 12, Orig.
26–May–16	IA	Muscatine ...	Muscatine Muni	6/7376	04/12/16	RNAV (GPS) RWY 30, Orig.
26–May–16	TX	Lago Vista ..	Lago Vista TX—Rusty Allen.	6/7941	04/12/16	RNAV (GPS) RWY 15, Orig-A.
26–May–16	TX	Odessa	Odessa-Schlemeyer Field	6/8024	04/12/16	RNAV (GPS) RWY 11, Orig-A.
26–May–16	TX	Taylor	Taylor Muni	6/8025	04/12/16	RNAV (GPS) RWY 17, Orig.
26–May–16	CA	Fullerton	Fullerton Muni	6/8243	04/07/16	RNAV (GPS) RWY 24, Orig-A.
26–May–16	CA	Fullerton	Fullerton Muni	6/8244	04/07/16	LOC/DME RWY 24, Orig-A.
26–May–16	CA	Fullerton	Fullerton Muni	6/8245	04/07/16	VOR–A, Amdt 7A.
26–May–16	OK	Miami	Miami Muni	6/9238	04/12/16	Takeoff Minimums and (Obstacle) DP, Orig.
26–May–16	NY	Albany	Albany Intl	6/9287	04/07/16	RNAV (GPS) RWY 28, Orig-A.
26–May–16	NY	Albany	Albany Intl	6/9288	04/07/16	RNAV (GPS) RWY 10, Orig-A.

[FR Doc. 2016–11956 Filed 5–23–16; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–77617A; File No. S7–25–11]

RIN 3235–AL10

Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is making a technical correction to a burden estimate for Paperwork Reduction Act purposes and a corresponding estimate in the Economic Analysis of the business conduct standards for security-based swap dealers and major security-based swap participants.

DATES: *Effective:* May 24, 2016.

FOR FURTHER INFORMATION CONTACT: Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, Office of Chief Counsel, Division of Trading and Markets, at (202) 551–5550, at the Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants (FR Doc. 2016–10918), published in the **Federal Register** on May 13, 2016, the following corrections are made:

1. On page 30090, in the third column, under the heading "1. *Verification of Status,*" the second sentence is hereby deleted and replaced with the sentence: "As noted above, Rule 15Fh–3(a)(3) differs from the CFTC's rule, which instead includes an opt-in for plans "defined in" ERISA, but not subject to Title I of ERISA." Footnote 1529 remains as published.

2. Also on page 30090, in the third column, in the fourth sentence under the same heading, the phrase "complying with the rules, as adopted," is replaced with the phrase "complying with Rules 15Fh–3(a)(1) and (2)".

3. On page 30091, in the first column, under the same heading, a new paragraph begins after footnote 1531, beginning with the sentence "We do not anticipate any ongoing burdens with respect to this rule."

4. Also on page 30091, in the first column, under the same heading, the following sentence is added to the end of the last paragraph under this heading: "We also anticipate that all 55 SBS Entities will incur, on average, an initial internal burden of 30 minutes to prepare the notice required pursuant to Rule 15Fh–3(a)(3) for counterparties defined in Rule 15Fh–2(d)(4), for an aggregate total of 27.5 hours."

5. On page 30110, in the first column, in the first sentence of the sixth paragraph under the heading "C. *Costs and Benefits of Business Conduct Rules,* 1. *Verification of Status and Know Your Counterparty Rules,*" the estimate for the direct costs of compliance is corrected to "$28,050" from "$17,600".

6. Footnote 1655 on page 30110, is corrected to: "Initial outside counsel cost: $500 * (20 non-CFTC registered SBS Entities) = $10,000. Initial adherence letter and notification burden: (In-house attorney at $380 per hour) × 47.5 hours = $18,050."

7. On page 30120, in the first column, in the fourth paragraph under the heading "4. *Special Entities,* a. *Scope and Verification,*" the third sentence is corrected to: "Out of 3,635 special entities subscribed to the ISDA August 2012 DF Protocol, 1,453 market participants (approximately 40%) are special entities not defined in Rule 15Fh–2(d)(3)."

Dated: May 19, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–12166 Filed 5–23–16; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2016–0016]

RIN 0960–AI00

Extension of Expiration Dates for Two Body System Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending the expiration dates of the following body systems in the Listing of Impairments (listings) in our regulations: Endocrine Disorders and Immune System Disorders. We are making no other revisions to these body systems in this final rule. This extension ensures that we will continue to have the criteria we need to evaluate impairments in the affected body systems at step three of the sequential evaluation processes for

initial claims and continuing disability reviews.

DATES: This final rule is effective on May 24, 2016.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Director, Office of Medical Policy, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

We use the listings in appendix 1 to subpart P of part 404 of 20 CFR at the third step of the sequential evaluation process to evaluate claims filed by adults and children for benefits based on disability under the title II and title XVI programs.[1] 20 CFR 404.1520(d), 416.920(d), 416.924(d). The listings are in two parts: Part A has listings criteria for adults and Part B has listings criteria for children. If you are age 18 or over, we apply the listings criteria in part A when we assess your impairment or combination of impairments. If you are under age 18, we first use the criteria in part B of the listings when we assess your impairment(s). If the criteria in part B do not apply, we may use the criteria in part A when those criteria give appropriate consideration to the effects of your impairment(s). 20 CFR 404.1525(b), 416.925(b).

Explanation of Changes

In this final rule, we are extending the dates on which the listings for the following two body systems will no longer be effective as set out in the following chart:

Listing	Current expiration date	Extended expiration date
Endocrine Disorders 9.00 and 109.00	June 7, 2016	June 8, 2018.
Immune System Disorders 14.00 and 114.00	June 16, 2016	June 18, 2018.

We continue to revise and update the listings on a regular basis, including those body systems not affected by this final rule.[2] We intend to update the two listings affected by this final rule as quickly as possible, but may not be able to publish final rules revising these listings by the current expiration dates. Therefore, we are extending the expiration dates listed above.

Regulatory Procedures

Justification for Final Rule

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in promulgating regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final regulation. The APA provides exceptions to the notice-and-comment requirements when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We determined that good cause exists for dispensing with the notice and public comment procedures. 5 U.S.C. 553(b)(B). This final rule only extends the date on which two body system listings will no longer be effective. It makes no substantive changes to our rules. Our current regulations[3] provide that we may extend, revise, or promulgate the body system listings again. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). We are not making any substantive changes to the listings in these body systems. Without an extension of the expiration dates for these listings, we will not have the criteria we need to assess medical impairments in these two body systems at step three of the sequential evaluation processes. We therefore find it is in the public interest to make this final rule effective on the publication date.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the requirements for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB did not review it. We also determined that this final rule meets the plain language requirement of Executive Order 12866.

Regulatory Flexibility Act

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we are amending part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act

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[1] We also use the listings in the sequential evaluation processes we use to determine whether a beneficiary's disability continues. See 20 CFR 404.1594, 416.994, and 416.994a.

[2] Since we last extended the expiration dates of some of the listings in January 2015 (80 FR 1 (2015)), we have published final rules revising the medical criteria for evaluating growth disorders and weight loss in children (80 FR 19522 (2015), corrected at 80 FR 48248 (2015)), hematological disorders (80 FR 21159 (2015)), and cancer (malignant neoplastic diseases) (80 FR 28821 (2015)).

[3] See the first sentence of appendix 1 to subpart P of part 404 of 20 CFR.

(42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by revising items 10 and 15 of the introductory text before Part A to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

10. Endocrine Disorders (9.00 and 109.00): June 8, 2018.

* * * * *

15. Immune System Disorders (14.00 and 114.00): June 18, 2018.

* * * * *

[FR Doc. 2016–12182 Filed 5–23–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

22 CFR Part 147

[Public Notice: 9498]

RIN 1400–AD87

Electronic and Information Technology

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule implements Section 508 of the Rehabilitation Act (Section 508) for the Department of State. Section 508 requires that when Federal departments and agencies develop, procure, maintain, or use electronic and information technology, they shall ensure that the electronic and information technology is accessible to individuals with disabilities who are Federal employees, applicants for employment, or members of the public.

DATES: This rule is effective June 23, 2016.

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, 202–647–2318, *kottmyeram@state.gov.*

SUPPLEMENTARY INFORMATION: This rule adds a new part 147, which implements Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d) ("Section 508"), as it applies to programs and activities conducted by the Department of State ("the Department").

Subpart A—General Provisions

Sections 147.1 and 147.2 provide that these rules are intended to implement Section 508, consistent with that statute and the regulations promulgated by the Access Board, at 36 CFR part 1194 ("Part 1194"). This rule applies to all development, procurement, maintenance, and use of electronic and information technology by the Department of State. Section 147.3 provides the definitions of "The Department," "Section 508", "Section 508 complaint", and "the Secretary", and adopts the definitions in 36 CFR 1194.4.

Section 147.4 provides that the Department will ensure that its employees, applicants for employment, and members of the public are provided with adequate notice of the Department's obligations under Section 508, part 1194, and these rules.

Sections 147.5 and 147.6 generally reiterate the requirements of Section 508 regarding the prohibition against discrimination, and the requirement for ensuring that EIT is accessible (in accordance with part 1194), unless an undue burden would be imposed on the Department—in which case an alternative means of access must be provided.

Subpart B—Complaint Procedures

Section 147.7 provides procedures for filing a complaint under Section 508. The procedures included therein are substantially the same procedures the Department has established in implementing Section 504 of the Rehabilitation Act of 1973 (22 CFR part 144). The relevant procedures are repeated in this rulemaking, for convenience. A Section 508 complaint must be filed with the Department's Office of Civil Rights, must be in writing, and submitted by fax, email, mail, or hand-delivery. The final, approved complaint form, designated DS–4282, is accessible and fillable and is available on the following page: *https://eforms.state.gov/searchform.aspx.* The Department's analysis and notice pursuant to the Paperwork Reduction Act are included in the "Regulatory Analysis," below. The DS–4282 will be used for complaints not only under Section 508, but under Section 504 and Title VI of the Civil Rights Act. This is reflected in the Paperwork Reduction Act analysis, below.

An individual with a disability alleging a violation of Section 508 must file a complaint not later than 180 days after the date the complainant knew, or should have known, of the alleged violation of Section 508. Once the Department receives the complaint, it must conduct an investigation and, within 180 days of receiving the complaint, shall notify the complainant of the results of the investigation in a letter containing findings of fact and conclusions of law; a description of a remedy for each violation found; and a notice of the right to appeal within 90 days of the complainant's receipt of the notice from the Department. The Department will notify the complainant of the results of the appeal within 60 days of the receipt of the appeal request.

Section 147.8 provides that a decision from the Department on the merits of a complaint, or no notification in writing from the Department within 180 days of filing the complaint, will constitute exhaustion of the complainant's administrative remedies for purposes of 5 U.S.C. 701, *et seq.* This provision does not yet have a counterpart in the Department's Section 504 implementing procedures; however, the Department is considering adding a parallel provision to 22 CFR part 144 in the near future.

The Department published a proposed rule on January 4, 2016. See 81 FR 44. The Department received one comment in response to the Paperwork Reduction Act notice, expressing support for the information collection, and received no comments on the proposed rule.

Regulatory Analysis

Administrative Procedure Act

The Department of State published this rulemaking as a proposed rule, with 60-day provision for public comment. The final rule will be in effect 30 days after publication.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any year; and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Regulatory Flexibility Act: Small Business

The Department of State certifies that this rulemaking will not have an impact on a substantial number of small entities. A regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Executive Order 12866 and Executive Order 13563

The Department of State has provided this final rule to the Office of Management and Budget (OMB) for its review. The Department has also reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, and finds that the benefits of the rule (in providing mechanisms for individuals to submit complaints of discrimination) outweigh any costs to the public, which are minimal. The Department of State has also considered this rulemaking in light of Executive Order 13563, and affirms that this proposed regulation is consistent with the guidance therein.

Executive Order 12988

The Department of State has reviewed this rule in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

This rule will not have substantial direct effect on the states, on the relationships between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. Executive Order 12372, regarding intergovernmental consultation on federal programs and activities, does not apply to this regulation.

Paperwork Reduction Act

The information collection contained in this rule is pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 and, although not yet in use, has been assigned an OMB Control Number. The Department submitted an information collection request to OMB for the review and approval of the Discrimination Complaint Form, DS–4282, under the PRA.

This information collection will provide a way for employees and members of the public to submit a complaint of discrimination under Section 508 and other federal statutes relating to discrimination, as described below.

30-Day Notice of Proposed Information Collection: DS–4282, Discrimination Complaint Form

The Department of State has submitted the information collection described below to OMB for approval. Direct request for additional information regarding the collection listed herein, including requests for copies of the proposed collection instrument and supporting documents, to the Office of the Legal Adviser (L/M), ATTN: Section 508 Final Rule, Suite 4325, U.S. Department of State, 2200 C Street NW., Washington DC 20520; email *kottmyeram@state.gov.*

- *Title of the Collection:* Complaint of Discrimination Under Section 504, Section 508 or Title VI.
- *OMB Control No.:* 1405–0220.
- *Type of Request:* New collection.
- *Originating Office:* Office of Civil Rights, U.S. Department of State.
- *Form Number:* Form DS–4282, Discrimination Complaint Form.
- *Respondents:* This information collection will be used by any Federal employee or member of the public who wishes to submit a complaint of discrimination under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or Sections 504 or 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794 and 794d).
- *Estimated number of respondents and responses:* The Department estimates a total of 10 respondents, with one response per respondent, per year.
- *An estimate of the total annual public burden (in hours) associated with the collection:* The average burden associated with this information collection is estimated to be 1 hour per respondent. Therefore, the Department estimates the total annual burden for this information collection to be 10 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

Abstract of proposed collection:

The form created by this information collection (DS–4282) will be used to present complaints of discrimination under Title VI of the Civil Rights Act of 1964; or Sections 504 or 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794 and 794d).

Methodology:

The form will be downloaded from *https://eforms.state.gov/searchform.aspx.* After completion, the form may be submitted by email, mail, fax, or hand-delivery.

List of Subjects in 22 CFR Part 147

Civil rights, Communications equipment, Computer technology, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

For the reasons set forth in the preamble, 22 CFR part 147 is added to subchapter O to read as follows:

PART 147—ELECTRONIC AND INFORMATION TECHNOLOGY

Subpart A—General Provisions

Sec.
147.1 Purpose.
147.2 Application.
147.3 Definitions.
147.4 Notice.
147.5 Discrimination prohibited.
147.6 Electronic and information technology requirements.

Subpart B—Complaint Procedures

147.7 Filing a Section 508 complaint.
147.8 Final agency action.

Authority: 22 U.S.C. 2651a; 29 U.S.C. 794, 794d; 36 CFR part 1194.

Subpart A—General Provisions

§ 147.1 Purpose.

The purpose of this part is to implement section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), which requires that when Federal departments and agencies develop, procure, maintain, or use electronic and information technology, they shall ensure that the electronic and information technology is accessible to individuals with disabilities who are Federal employees, applicants for employment, or members of the public.

§ 147.2 Application.

This part applies to all development, procurement, maintenance, and use of electronic and information technology (EIT), as defined in 36 CFR 1194.4.

§ 147.3 Definitions.

This part incorporates the definitions in 36 CFR 1194.4. In addition, as used in this part:

Department means the United States Department of State and any of its passport agencies or other facilities.

Secretary means the Secretary of State or his or her designee.

Section 508 means section 508 of the Rehabilitation Act of 1973, codified at 29 U.S.C. 794d, Public Law 93–112, Title V, Section 508, as added Public Law 99–506, Title VI, Section 603(a), Oct. 21, 1986, 100 Stat. 1830, and amended Public Law 100–630, Title II, Section 206(f), Nov. 7, 1988, 102 Stat. 3312; Public Law 102–569, Title V, Section 509(a), Oct. 29, 1992, 106 Stat. 4430; Public Law 105–220, Title IV, Section 408(b), Aug. 7, 1998, 112 Stat.1203.

§ 147.4 Notice.

(a) The Secretary shall ensure that employees, applicants for employment, and the members of the public are provided with adequate notice of the requirements of Section 508, the Electronic and Information Technology Accessibility Standards (36 CFR part 1194), and this part, as they relate to the programs or activities conducted by the Department.

(b) The Secretary shall ensure that the home page of the Department's public-facing Web site provides Department policy regarding accessibility of EIT in accordance with Section 508 and 36 CFR part 1194, as well as an email address for the public to ask questions or express concerns.

§ 147.5 Discrimination prohibited.

The Department must comply with EIT Accessibility Standards when it develops, procures, maintains, or uses EIT. The Department must ensure that individuals with disabilities who are Federal employees or members of the public have access to and use of information and data that is comparable to that provided to Federal employees or members of the public without disabilities, unless providing comparable access would impose an undue burden on the Department.

§ 147.6 Electronic and information technology requirements.

(a) *Development, procurement, maintenance, or use of EIT.* When developing, procuring, maintaining, or using EIT, the Department shall ensure, unless an undue burden would be imposed on the Department, that the EIT allows, regardless of the type of medium of the technology, that—

(1) Individuals with disabilities who are Department employees have access to and use of information and data that is comparable to the access to and use of the information and data by Department employees who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from the Department have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.

(b) In meeting its obligations under paragraph (a) of this section, the Department shall comply with the Electronic and Information Technology Accessibility Standards, 36 CFR part 1194.

(c) *Alternative means of access when undue burden is imposed.* When development, procurement, maintenance, or use of EIT that meets the standards as provided in 36 CFR part 1194 would impose an undue burden, the Department shall provide individuals with disabilities covered by this section with the relevant information and data by an alternative means of access that allows the individual to use the information and data.

(d) *Procedures for determining undue burden.* The Department procedures for finding that full compliance with 36 CFR part 1194 would impose an undue burden can be found at: *http://www.state.gov/m/irm/impact/126338.htm.*

Subpart B—Complaint Procedures

§ 147.7 Filing a Section 508 complaint.

(a) An individual with a disability who alleges that Department's EIT does not allow him or her to have access to and use of information and data that is comparable to access and use by individuals without disabilities, or that the alternative means of access provided by the Department does not allow the individual to use the information and data, may file a complaint with the Department's Office of Civil Rights (S/OCR).

(b) Employees, applicants for employment, or members of the general public are encouraged to contact personnel in the Department office that uses or maintains a system that is believed not to be compliant with Section 508 or 36 CFR part 1194 to attempt to have their issues addressed. Nothing in this complaint process is intended to prevent Department personnel from addressing any alleged compliance issues when made aware of such requests directly or indirectly.

(c) A Section 508 complaint must be filed not later than 180 calendar days after the complainant knew, or should have known, of the alleged discrimination, unless the time for filing is extended by the Department. A Section 508 complaint must be submitted in writing by fax, email, mail, or hand delivery to the S/OCR office, using the Form DS–4282, Discrimination Complaint Form, which can be downloaded at: *https://eforms.state.gov/searchform.aspx.*

(d) Once a Section 508 complaint has been received, S/OCR will conduct an investigation into the allegation(s) and render a decision as to whether a Section 508 violation has occurred. Within 180 days of the receipt of a complete complaint under this part, the Secretary shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

Upon request of the complainant, the decision will be provided in an alternate format, such as an electronic format, braille, or large print.

(e) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Department of the notice required by § 147.7(d). The Department may extend this time for good cause.

(f) Timely appeals shall be accepted and processed by the Department.

(g) The Secretary shall notify the complainant of the results of the appeal within 60 days of the receipt of the appeal. If the Secretary determines that additional information is needed from the complainant, the Secretary shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(h) Individuals who submit a complaint must keep S/OCR updated at all times with current contact information, to include address, phone number, and working email address. If the Department needs additional information and is unable, after reasonable attempts for 30 days, to contact a complainant using his or her contact information, it may consider the complaint abandoned, and may close the complaint without action. A complainant may re-submit a complaint that was closed due to the inability of the Department to contact the complainant.

(i) A Department employee who receives a Section 508 complaint or a communication that raises an issue that might reasonably be considered a Section 508 complaint, should forward such communication to S/OCR.

§ 147.8 Final agency action.

Either a decision by the Secretary on the merits of a complaint, or no notification in writing from the Secretary within 180 days of filing the complaint, will a constitute a final agency action and exhaustion of the complainant's administrative remedies for purposes of 5 U.S.C. 701, *et seq.*

Dated: May 9, 2016.

John M. Robinson,

Director, Office of Civil Rights, Department of State.

[FR Doc. 2016–12233 Filed 5–23–16; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 14 and 20

RIN 2900–AP71

Mailing Address of the Board of Veterans' Appeals

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations on representation of claimants and the Rules of Practice of the Board of Veterans' Appeals (Board) to update the Board's mailing address and titles of certain individuals and offices at the Board to whom mail is addressed. These amendments are necessary because of a mailing address change and to ensure that correct titles of certain individuals and offices at the Board are reflected in the regulations.

DATES: *Effective Date:* This rule is effective May 24, 2016.

FOR FURTHER INFORMATION CONTACT: Donnie R. Hachey, Chief Counsel for Operations, Board of Veterans' Appeals (01C2), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–4603. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Board is updating its mailing address because of new centralized mail procedures. This document amends 38 CFR parts 14 and 20 to update the Board's mailing address and titles of certain individuals and offices to whom mail is addressed. The purpose of these revisions is to ensure that the information contained in 38 CFR parts 14 and 20 is current and correct.

The new centralized mail procedures are consistent with paperless VA claims and appeals processing. The purpose of these procedures is to increase efficiency of mail processing. Centralized mail processing allows Board staff to electronically review mail related to appeals and upload that mail to a Veteran's electronic claims file in the Veterans Benefits Management System (VBMS).

Centralized mail processing allows for electronic processing of the Board's appeals-related mail. The Board also receives mail not intended to be associated with a Veteran's claims file for consideration in a specific case. For example, as indicated above, an individual seeking additional information regarding this rulemaking may contact the Board's Chief Counsel for Operations, via mail. The Board also distributes a Board of Veterans' Appeals Hearing Survey Card, VA Form 0745, which allows an appellant to provide anonymous feedback regarding his or her Board hearing. The Board Hearing Survey Card includes an attached Business Reply Mail envelope addressed to the Board. Additionally, the Board's incoming mail includes various periodicals.

The Board is presently only utilizing centralized mail procedures to process mail related to appeals, which should be mailed to the Board's new post office box. Other types of mail should continue to be mailed to the Board at 810 Vermont Avenue NW., Washington, DC 20420. VA is amending 38 CFR 20.100(c), to distinguish between these two different mailing addresses for these two different types of mail.

Administrative Procedure Act

These changes to 38 CFR parts 14 and 20 are being published without regard to notice-and-comment procedures of 5 U.S.C. 553(b) because they involve only matters of agency organization, procedure, or practice, which are exempted from such procedures by virtue of 5 U.S.C. 553(b)(A). Further, because these changes do not involve substantive rules, they are not subject to the provisions of 5 U.S.C. 553(d) providing for a 30-day delay in the effective date of substantive rules.

Paperwork Reduction Act

Although this action contains provisions constituting collections of information at 38 CFR 20.608, 20.702, and 20.704, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this final rule. The information collection requirements for §§ 20.608, 20.702, and 20.704 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0085.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the final regulatory flexibility analysis requirements of section 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action" requiring review by OMB, unless OMB waives such review, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing-Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116,Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing-Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing-Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert D. Snyder, Chief of Staff, Department of Veterans Affairs, approved this document on March 31, 2016, for publication.

List of Subjects

38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Dated: May 18, 2016.

Michael Shores,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR parts 14 and 20 as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

■ 1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5901–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

■ 2. Amend § 14.629 by revising the eighth sentence of paragraph (c)(3) to read as follows:

§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.

* * * * *

(c) * * *

(3) * * * In the case of appeals before the Board in Washington, DC, the signed consent must be submitted to: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. * * *

* * * * *

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 3. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart B—The Board

■ 4. Amend § 20.100 by revising paragraph (c) to read as follows:

§ 20.100 Rule 100. Name, business hours, and mailing address of the Board.

* * * * *

(c) *Mailing Address.* Except as otherwise noted in these Rules, appeals-related mail to the Board must be addressed to: Chairman (01), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. Mail to the Board that is not related to an appeal must be addressed to: Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420.

* * * * *

Subpart C—Commencement and Perfection of Appeal

■ 5. Amend § 20.204 by revising the second sentence of paragraph (b)(2) to read as follows:

§ 20.204 Rule 204. Withdrawal of Appeal.

* * * * *

(b) * * *

(2) * * * Thereafter, file the withdrawal at the following address: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

* * * * *

Subpart G—Representation

■ 6. Amend § 20.608 by revising the fifth sentence of paragraph (b)(2) to read as follows:

§ 20.608 Rule 608. Withdrawal of services by a representative.

* * * * *

(b) * * *

(2) * * * Such motions must be filed at the following address: Office of the Principal Deputy Vice Chairman (01C), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. * * *

* * * * *

Subpart H—Hearings on Appeal

■ 7. Amend § 20.702 by:

■ a. Revising the fourth sentence of paragraph (c)(1).

■ b. Revising the eighth sentence of paragraph (c)(2).

■ c. Revising the fourth sentence of paragraph (d).

■ d. Revising the third sentence of paragraph (e).

The revisions read as follows:

§ 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC.

* * * * *

(c) * * *

(1) * * * In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, such requests for a new hearing date must be filed with: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

(2) * * * In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion

for a new hearing date must be filed with: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

* * * * *

(d) * * * In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion must be filed with: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.
* * *

* * * * *

(e) * * * In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the notice of withdrawal must be sent to: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

* * * * *

■ 8. Amend § 20.704 by revising the fourth sentence of paragraph (d) to read as follows:

§ 20.704 Rule 704. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.

* * * * *

(d) * * * Such motions must be filed with: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. * * *

* * * * *

■ 9. Amend § 20.708 by revising the second sentence to read as follows:

§ 20.708 Rule 708. Prehearing conference.

* * * With respect to hearings to be held before the Board at Washington, DC, arrangements for a prehearing conference must be made through: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. * * *

* * * * *

■ 10. Amend § 20.711 by revising paragraph (c) to read as follows:

§ 20.711 Rule 711. Subpoenas.

* * * * *

(c) *Where filed.* Motions for a subpoena must be filed with the Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

* * * * *

■ 11. Amend § 20.714 by revising the fourth sentence in the parenthetical in paragraph (a)(1) to read as follows:

§ 20.714 Rule 714. Record of hearing.

(a) * * *

(1) * * * They must be filed with: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.)

* * * * *

■ 12. Amend § 20.715 by revising the fifth sentence to read as follows:

§ 20.715 Rule 715. Recording of hearing by appellant or representative.

* * * In the case of hearings held before the Board of Veterans' Appeals in Washington, DC, arrangements must be made with the Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

* * * * *

■ 13. Amend § 20.716 by revising the fifth sentence to read as follows:

§ 20.716 Rule 716. Correction of hearing transcripts.

* * * In the case of hearings held before the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. * * *

* * * * *

■ 14. Amend § 20.717 by revising paragraph (c) to read as follows:

§ 20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.

* * * * *

(c) *Where motion for a new hearing is filed.* In the case of hearings held before the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

* * * * *

Subpart J—Action by the Board

■ 15. Amend § 20.900 by revising the second sentence of paragraph (c)(2) to read as follows:

§ 20.900 Rule 900. Order of consideration of appeals.

* * * * *

(c) * * *

(2) * * * The motion must be filed with: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

* * * * *

Subpart K—Reconsideration

■ 16. Amend § 20.1001 by revising the second sentence of paragraph (b) to read as follows:

§ 20.1001 Rule 1001. Filing and disposition of motion for reconsideration.

* * * * *

(b) * * * Such motions must be filed at the following address: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

* * * * *

Subpart N—Miscellaneous

■ 17. Amend § 20.1301 by revising the tenth sentence of paragraph (b)(2) to read as follows:

§ 20.1301 Rule 1301. Disclosure of information.

* * * * *

(b) * * *

(2) * * * These requests must be directed to the Research Center (01C1), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

* * * * *

■ 18. Amend § 20.1304 by revising the fourth sentence of paragraph (b)(1) to read as follows:

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

* * * * *

(b) * * *

(1) * * * Such motions must be filed at the following address: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.
* * *

* * * * *

Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error

■ 19. Amend § 20.1404 by revising the second sentence of paragraph (c) to read as follows:

§ 20.1404 Rule 1404. Filing and pleading requirements; withdrawal.

* * * * *

(c) * * * Such motions should be filed at the following address: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

* * * * *

■ 20. Amend § 20.1405 by revising paragraph (c)(2) to read as follows:

§ 20.1405 Rule 1405. Disposition.

* * * * *

(c) * * *

(2) *Submission of requests.* Requests for such a hearing shall be submitted to the following address: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

* * * * *

[FR Doc. 2016–12111 Filed 5–23–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0151; FRL–9946–82–Region 4]

Air Quality Plan Approval; South Carolina; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the portions of the State Implementation Plan (SIP) submission, submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on May 8, 2014, for inclusion into the South Carolina SIP. This final action pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO_2) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure SIP submission." SC DHEC certified that the South Carolina SIP contains provisions that ensure the 2010 1-hour SO_2 NAAQS is implemented, enforced, and maintained in South Carolina. EPA has determined that portions of South Carolina's infrastructure SIP submission, provided to EPA on May 8, 2014, satisfy certain required infrastructure elements for the 2010 1-hour SO_2 NAAQS.

DATES: This rule will be effective June 23, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2015–0151. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via electronic mail at *notarianni.michele@epa.gov* or via telephone at (404) 562–9031.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On June 22, 2010 (75 FR 35520), EPA revised the primary SO_2 NAAQS to an hourly standard of 75 parts per billion (ppb) based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour SO_2 NAAQS to EPA no later than June 2, 2013.[1]

In a proposed rulemaking published on March 7, 2016 (81 FR 11717), EPA proposed to approve portions of South Carolina's 2010 1-hour SO_2 NAAQS infrastructure SIP submission submitted on May 8, 2014. The details of South Carolina's submission and the rationale for EPA's actions are explained in the proposed rulemaking. Comments on the proposed rulemaking were due on or before April 6, 2016. EPA received no adverse comments on the proposed action.

II. Final Action

With the exception of interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility protection requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), EPA is taking final action to approve South Carolina 's infrastructure submission submitted on May 8, 2014, for the 2010 1-hour SO_2 NAAQS. EPA is taking final action to approve South Carolina's infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS because the submission is consistent with section 110 of the CAA.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely

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[1] Today, EPA is providing clarification for an inadvertent typographical error that was included in the March 7, 2016, proposed rulemaking, for this final action. In the March 7, 2016, proposed rulemaking it was stated that the 2010 1-hour SO_2 NAAQS infrastructure SIPs were due no later than June 22, 2013. The 2010 1-hour SO_2 NAAQS infrastructure SIPs were actually due to EPA from states no later than June 2, 2013.

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action for the state of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The Catawba Indian Nation Reservation is located within the State of South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, South Carolina statute 27–16–120, "all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities." However, EPA has determined that this rule does not have substantial direct effects on an Indian Tribe because this action is not approving any specific rule, but rather approving that South Carolina's already approved SIP meets certain CAA requirements. EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 25, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxide.

Dated: May 12, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart PP—South Carolina

■ 2. Section 52.2120(e), is amended by adding a new entry "110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO_2 NAAQS" at the end of the table to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED SOUTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Explanation
* *	*	*	* * *
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO_2 NAAQS.	5/8/2014	5/24/2016 [Insert **Federal Register** citation].	With the exception of interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4).

[FR Doc. 2016–12112 Filed 5–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0518; FRL–9946–76–Region 4]

Air Plan Approval; North Carolina; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of a revision to North Carolina's regional haze State Implementation Plan (SIP), submitted by the North Carolina Department of Environmental Quality (formerly known as the North Carolina Department of Environment and Natural Resources (NC DENR)) on October 31, 2014, that relies on an alternative to Best Available Retrofit Technology (BART) to satisfy BART requirements for electric generating units (EGUs) formerly subject to the Clean Air Interstate Rule (CAIR). EPA is also finalizing its determination that final approval of this SIP revision corrects the deficiencies that led to EPA's limited disapproval of the State's regional haze SIP on June 7, 2012, and is converting EPA's June 27, 2012, limited approval to a full approval. This submittal addresses the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future, and remedy any existing, manmade impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area

(also referred to as the regional haze program). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.

DATES: This rule is effective June 23, 2016.

ADDRESSES: *EPA has established a docket for these actions under Docket Identification No.* EPA–R04–OAR–2015–0518. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via electronic mail at *notarianni.michele@epa.gov* or via telephone at (404) 562–9031.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (*e.g.*, sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.*, sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia and volatile organic compounds). In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. In the 1990 CAA Amendments, Congress amended the visibility provisions in the CAA to focus attention on the problem of regional haze.

In 1999, EPA promulgated the regional haze rule (RHR), which requires states to develop and implement SIPs to ensure reasonable progress toward improving visibility in Class I areas by reducing emissions that cause or contribute to regional haze. *See* 64 FR 35713 (July 1, 1999). The RHR requires each state, the District of Columbia, and the Virgin Islands to each submit a regional haze SIP no later than December 17, 2007. Under 40 CFR 51.308(e), the SIP must contain emission limitations representing BART and schedules for compliance with BART for each BART-eligible source, unless the SIP demonstrates that an emissions trading program or other alternative (BART Alternative) will achieve greater reasonable progress toward natural visibility conditions than would have resulted from the installation and operation of BART at all sources subject to BART and covered by the BART Alternative. An approvable BART Alternative must meet the criteria in 40 CFR 51.308(e)(2).

North Carolina submitted its regional haze SIP on December 17, 2007, the regional haze SIP submittal deadline. Fully consistent with EPA's regulations at the time, the SIP relied on CAIR to satisfy NO_X and SO_2 BART requirements for CAIR-subject EGUs in the State and to partially satisfy the requirement for a long-term strategy sufficient to achieve the State-adopted reasonable progress goals. EPA finalized a limited disapproval of North Carolina's regional haze SIP on June 7, 2012 (77 FR 33642), triggering the requirement for EPA to promulgate a Federal Implementation Plan (FIP) unless EPA approves a SIP revision that corrects the deficiency. EPA finalized a limited approval of North Carolina's regional haze SIP on June 27, 2012 (77 FR 38185), as meeting the remaining applicable regional haze requirements set forth in the CAA and the RHR. On October 31, 2014, NC DENR submitted a revision to North Carolina's regional haze SIP to correct the deficiencies identified in the June 7, 2012, limited disapproval by replacing reliance on CAIR with reliance on a BART Alternative to satisfy NO_X and SO_2 BART requirements for EGUs formerly subject to CAIR.

In a notice of proposed rulemaking (NPRM) published on April 5, 2016 (81 FR 19519), EPA proposed to approve North Carolina's October 31, 2014, BART Alternative regional haze SIP revision; to determine that final approval of the SIP revision would correct the deficiencies that led to EPA's limited disapproval of the State's regional haze SIP; and to convert EPA's limited approval of the State's regional haze SIP to a full approval, thereby eliminating the need for EPA to issue a FIP to remedy the deficiencies. The details of North Carolina's submission and the rationale for EPA's actions are explained in the NPRM. Comments on the proposed rulemaking were due on or before April 26, 2016.

EPA received one set of comments supporting the proposed actions and no adverse comments. The supporting comments were provided by Duke Energy. Table 1 in EPA's NPRM indicates that Units 5–9 at Duke Energy's Buck power plant were converted from coal to natural gas. *See* 81 FR 19521 (April 5, 2016). Duke Energy's supporting comments clarify that these five EGUs were retired from operation in 2011 and 2012 and that the units have been replaced by two new natural gas-fired combined cycle turbines equipped with Selective Catalytic Reduction for NO_X control. This clarification does not impact EPA's conclusions because it does not alter the analysis supporting the BART Alternative.

II. Final Actions

EPA is finalizing approval of North Carolina's October 31, 2014, regional haze SIP revision because EPA has determined that the BART Alternative contained therein meets the requirements of 40 CFR 51.308(e)(2). EPA is also converting EPA's June 27, 2012, limited approval of North Carolina's regional haze SIP to a full approval because EPA finds that final approval of the State's October 31, 2014, regional haze SIP revision corrects the deficiencies that led to EPA's limited disapproval of the State's regional haze SIP.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These actions are not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by July 25, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 12, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II—North Carolina

■ 2. Section 52.1770(e), is amended by adding an entry for "BART Alternative Plan" at the end of the table to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA Approval date	**Federal Register** citation	Explanation
*	*	*	*	* * *
BART Alternative Plan	10/31/2014	5/24/2016	[Insert **Federal Register** citation].	This plan modifies the Regional Haze Plan approved with a state effective date of 11/17/2007 (see above) and converts the June 27, 2012, limited approval to a full approval.

§ 52.1776 [Removed and Reserved]

■ 3. Section 52.1776 is removed and reserved.

[FR Doc. 2016–12096 Filed 5–23–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality Office for Civil Rights

42 CFR Part 3

Patient Safety and Quality Improvement Act of 2005—HHS Guidance Regarding Patient Safety Work Product and Providers' External Obligations

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Office for Civil Rights (OCR), Department of Health and Human Services (HHS).

ACTION: Guidance on Patient Safety and Quality Improvement Act of 2005.

SUMMARY: This guidance sets forth guidance for patient safety organizations (PSOs) and providers regarding questions that have arisen about the Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21—b–26 (Patient Safety Act), and its implementing regulation, the Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule). In particular, this Patient Safety and Quality Improvement Act of 2005—Guidance Regarding Patient Safety Work Product and Providers' External Obligations (Guidance) is intended to clarify what information that a provider creates or assembles can become patient safety work product (PSWP) in response to recurring questions. This Guidance also clarifies how providers can satisfy external obligations related to information collection activities consistent with the Patient Safety Act and Patient Safety Rule.

DATES: The Guidance is effective on May 24, 2016.

ADDRESSES: The Guidance can be accessed electronically at the following HHS Web site: *http://www.pso.ahrq.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Grinder, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, Mail Stop 06N100B, Rockville, MD 20857; Telephone (301) 427–1327; Email: *Susan.Grinder@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Act and Rule relating to the listing and operation of PSOs. OCR, within HHS, is responsible for interpretation, administration and enforcement of the confidentiality protections and disclosure permissions of the Patient Safety Act and Patient Safety Rule.

HHS Approach to Patient Safety Act Interpretation

The Patient Safety Act is part of a larger framework envisioned by the Institute of Medicine and designed to balance two goals: 1) To improve patient safety and reduce medical errors by creating a "culture of safety" to share and learn from information related to patient safety events, and 2) to promote health care providers' accountability and transparency through mechanisms such as oversight by regulatory agencies and adjudication in the legal system. As discussed in "To Err Is Human," in respect to reporting systems, "they can hold providers accountable for performance or, alternatively, they can provide information that leads to improved safety. Conceptually, these purposes are not incompatible, but in reality, they can prove difficult to satisfy simultaneously."[1]

The Patient Safety Act promotes the goal of improving patient safety and reducing medical errors by establishing a system in which health care providers can voluntarily collect and report information related to patient safety, health care quality, and health care outcomes to PSOs. The PSOs aggregate and analyze this information and give feedback to the providers to encourage learning and prevent future errors. The providers are motivated to report such information to PSOs because the Patient Safety Act provides broad privilege and confidentiality protections for information meeting the definition of PSWP, which alleviates concerns about such information being used against a provider, such as in litigation.

At the same time, providers are subject to legitimate external obligations regarding certain records about patient safety to ensure their accountability and transparency. For example, the Centers for Medicare & Medicaid Services (CMS) Hospital Condition of Participation (CoP) for Quality Assessment and Performance Improvement require hospitals to track adverse patient events.[2] State health care regulatory agencies typically have their own separate requirements for different types of providers, with more than half of the states operating adverse event reporting systems.[3] The legal system provides another course to pursue accountability for medical errors. If a patient is injured while under a provider's care, the tort system offers an avenue to compensate the patient for his injury. However, while a successful medical malpractice claim may help compensate one patient for his specific injury, the general threat of litigation provides a disincentive to providers from voluntarily sharing information about their mistakes.

The intent of the system established by the Patient Safety Act is to protect the additional information created through voluntary patient safety activities, not to protect records created through providers' mandatory information collection activities.[4] For example, a provider may have an external obligation to maintain certain records about serious adverse events that result in patient harm. The document the provider prepares to meet its requirement about such adverse events is not PSWP. As such, the Patient Safety Act recognizes the goal of accountability and transparency, and it attempts to balance this goal with that of improving patient safety and reducing medical errors. While Congress was aware of the chilling effect the fear of being sued had on providers, the Patient Safety Act was not designed to prevent patients who believed they were harmed from obtaining the records about their care that they were able to obtain prior to the enactment of the Patient Safety Act.[5] Nor was the Patient Safety Act intended to insulate providers from demonstrating accountability through fulfilling their external obligations.[6] Therefore, when interpreting the Patient Safety Act and Patient Safety Rule, HHS does so with the objective of maintaining balance between these two policy goals, consistent with the intent of the Patient Safety Act.

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[1] Institute of Medicine, "*To Err Is Human: Building a Safer Health System*", 1999, page 86.

[2] 42 CFR 482.21(a)(2).

[3] As of November 2014, 26 states and the District of Columbia had adverse event reporting systems, and Texas began implementing a system in January 2015. National Academy for State Health Policy, "*2014 Guide to State Adverse Event Reporting Systems*", 2015, page 4. For example, Pennsylvania hospitals, ambulatory surgical facilities, birthing centers, nursing homes, and other facilities are required by various state laws to submit reports on "serious events" and "incidents" to the Pennsylvania Patient Safety Reporting System ("PA–PSRS"). Information submitted to PA–PSRS is confidential under state law. Patient Safety Authority, *Pennsylvania Patient Safety Reporting System: PA–PSRS (Pennsylvania Patient Safety Reporting System), http://patientsafetyauthority.org/PA-PSRS/Pages/PAPSRS.aspx* (last accessed Mar. 4, 2016). In Maine, "healthcare facilities," which includes hospitals, ambulatory surgical facilities, end-stage renal disease facilities, and intermediate care facilities for individuals who are intellectually disabled, are required to report "sentinel events" and root cause analyses of sentinel events to the Maine Department of Health and Human Services. The healthcare facilities may also voluntarily self-report "near miss events." Under state law, the reported information is confidential and privileged. *See* 10–144 C.M.R. Ch 114, Rules Governing the Reporting of Sentinel Events. In addition or alternative to reporting requirements, some states require providers to maintain certain information. For example, Delaware requires certain facilities that perform invasive medical procedures to report adverse events to the Department of Health and Social Services within 48 business hours of the occurrence and also keep the adverse event reports "on file at the facility for a minimum of five years." CDR 16–4000–4408 Sections 4.3, 4.4. In Kentucky, hospitals are required to "establish[], maintain[], and utilize[]" administrative reports, including incident investigation reports, "to guide the operation, measure productivity, and reflect the programs of the facility." 902 KAR 20:016 Section 3(3)(a).

[4] *See e.g.,* 42 U.S.C. 299b-21(7)(B)(iii)(II), (III); 42 U.S.C. 299b-22(g)(2), (5) (generally providing that the Patient Safety Act does not affect or limit providers' obligations to record or report information that is not PSWP to Federal, state, or local governmental agencies).

How Information Becomes PSWP

Both the Notice of Proposed Rulemaking (NPRM) and the Preamble to the Patient Safety Rule (Preamble) discuss the definition of PSWP and provide examples of what information would and would not meet the definition.[7] Because there continues to be confusion about this definition, the prior discussion will be reiterated and further clarified here. The definition of PSWP sets forth three basic ways that certain information can become PSWP: (1) The information is prepared by a provider for reporting to a PSO and it is reported to the PSO, (2) the information is developed by a PSO for the conduct of patient safety activities,[8] or, (3) the information identifies or constitutes the deliberations or analysis of, or identifies the fact of reporting pursuant to, a patient safety evaluation system (PSES).[9] The first way—sometimes referred to as the "reporting pathway"—is how providers generally create most of their PSWP. According to the Patient Safety Act, in order for information to become PSWP through the reporting pathway, it must be information that could improve patient safety, health care quality, or health care outcomes and be assembled or developed by a provider for reporting to a PSO and be reported to a PSO. Another way of saying that the information is assembled or developed for reporting to a PSO is that the information is prepared *for the purpose of* reporting it to the PSO.[10] Under the Patient Safety Rule, the reporting pathway allows for information that is documented as collected within the provider's PSES to be PSWP and thus privileged and confidential before it is reported to a PSO. As explained in the Preamble, this interpretation addresses the concerns of significant administrative burden and an indiscriminate race to report information to the PSO if information only became protected after it was reported to a PSO.[11] Nevertheless, a provider should only place information in its PSES if it intends to report that information to the PSO.[12]

Information That Is Not PSWP

The definition of PSWP also describes information that is not PSWP. Specifically excluded from the definition of PSWP is, "a patient's medical record, billing and discharge information, or any other original patient or provider information." [13] The Patient Safety Act and Rule also exclude from the PSWP definition "information that is collected, maintained, or developed separately, or exists separately, from a patient safety evaluation system." [14] Put another way, information prepared for purposes other than reporting to a PSO is not PSWP under the reporting pathway.[15]

Within the category of information prepared for a purpose other than reporting to a PSO, information that is prepared for external obligations has generated many questions. External obligations include, but are not limited to, mandatory requirements placed upon providers by Federal and state health regulatory agencies.[16] Both the NPRM and Preamble clearly state that PSWP cannot be used to satisfy such external obligations. "As the Patient Safety Act states more than once, these external obligations must be met with information that is not patient safety work product, and, in accordance with the confidentiality provisions, patient safety work product cannot be disclosed for these purposes." [17] In the Preamble, HHS repeatedly stated that PSWP cannot be used to fulfill external obligations.[18]

Purpose for Which the Information Was Assembled or Developed

As such, uncovering the purpose for which information is prepared can be a critical factor in determining whether the information is PSWP. Since some types of information can be PSWP or not depending upon why the information was assembled or developed, it is important for providers to be aware of whether information is prepared for reporting to a PSO. The chart below includes some examples.

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[5] "It is not the intent of this legislation to establish a legal shield for information that is already currently collected or maintained separate from the new patient safety process, such as a patient's medical record. That is, information which is currently available to plaintiffs' attorneys or others will remain available just as it is today." 151 Cong. Rec. S8741 (daily ed. Jul. 22, 2005) (statement of Mr. Enzi, then chairman of the Senate Health, Education, Labor, and Pensions Committee). "Nor does this bill alter any existing rights or remedies available to injured patients. The bottom line is that this legislation neither strengthens nor weakens the existing system of tort and liability law." *Id.* (statement of Mr. Jeffords, who reintroduced S. 544, the bill that became the Patient Safety Act).

[6] "This legislation does nothing to reduce or affect other Federal, State or local legal requirements pertaining to health related information." *Id.* (statement of Mr. Jeffords).

[7] 73 FR 8120–24, Oct. 5, 2007; 73 FR 70739–44, Nov. 21, 2008.

[8] This guidance does not otherwise address the creation of PSWP through development by a PSO. Because external regulatory and oversight reporting obligations are requirements of providers, this guidance does not apply to information developed by a PSO for the conduct of patient safety activities.

[9] 42 U.S.C. 299b-21(7)(A); 42 CFR 3.20 (paragraph (1) of the definition of PSWP). Patient safety evaluation system "means the collection, management, or analysis of information for reporting to or by a PSO." 42 U.S.C. 299b-21(6); 42 CFR 3.20.

[10] *See* 73 FR 70739, Nov. 21, 2008 ("information may become patient safety work product if it is assembled or developed by a provider for the purpose of reporting to a PSO and is reported to a PSO").

[11] *See* 73 FR 70741–42, Nov. 21, 2008.

[12] *Id.* ("We note, however, that a provider should not place information into its patient safety evaluation system unless it intends for that information to be reported to the PSO.").

[13] 42 CFR 3.20 (paragraph (2)(i) of the PSWP definition). The Patient Safety Act, at U.S.C. 299b-21(7)(B)(i), refers to "original patient or provider record[s]," but the use of "original patient or provider information" in the regulation is intended to be synonymous with the use of "original patient or provider record" in the statute.

[14] 42 U.S.C. 299b-21(7)(B)(ii); 42 CFR 3.20 (paragraph (2)(i) of the PSWP definition).

[15] *See* 73 FR 70740, Nov. 21, 2008 ("Patient safety work product does not include information that is collected, maintained, or developed separately or exists separately from, a patient safety evaluation system. This distinction is made because these and similar records must be maintained by providers for other purposes.").

[16] Some examples of external obligations include: state incident reporting, adverse drug event reporting to the Food and Drug Administration (FDA), certification or licensing recordkeeping, reporting to the National Practitioner Data Bank, and disclosing information to comply with CMS' CoPs or conditions for coverage. 73 FR 8123, Oct. 5, 2007.

[17] 73 FR 8123, Oct. 5, 2007.

[18] *See e.g.,* 73 FR 70740, Nov. 21, 2008 (". . . external reporting obligations as well as voluntary reporting activities that occur for the purpose of maintaining accountability in the health care system cannot be satisfied with patient safety work product."), 70742 ("These external obligations must be met with information that is not patient safety work product and oversight entities continue to have access to this original information in the same manner as such entities have had access prior to the passage of the Patient Safety Act."), 70743 ("The final rule is clear that providers must comply with applicable regulatory requirements and that the protection of information as patient safety work product does not relieve a provider of any obligation to maintain information separately.").

[19] *See* CMS Pub. 100–07, State Operations Manual, Appendix A, Transmittal 37, page 275 (Oct. 17, 2008) (in providing interpretative guidance on compliance with 42 CFR 482.41(c)(2), stating

Type of information	Not PSWP if prepared . . .	Could be PSWP if information is not required for another purpose and is prepared solely for reporting to a PSO, for example . . .
Information related to the functioning of medical equipment.	For upkeep of equipment (e.g., original equipment maintenance logs), to maintain a warranty, or for an external obligation (e.g., CMS requires some equipment logs[19]).	Following a patient incident, a provider develops information about possible equipment malfunctions for reporting to a PSO. The PSO can aggregate it with other rare events from other reporting providers to identify risks and hazards.
A list of provider staff who were present at the time a patient incident occurred.	To ensure appropriate levels of clinician availability (e.g., routine personnel schedules), or for compliance purposes[20].	Following the incident, a provider originally assembles the list for reporting to a PSO so the PSO can analyze the levels and types of staff involved in medication errors.
Written reports[21] of witness accounts of what they observed at the time of a patient incident.	For internal risk management (claims and liability purposes).	The provider originally prepares the written reports for reporting to the PSO so that the richness of the narrative can be mined for contributing factors.
Information related to care or treatment provided to the patient.	As part of the patient's original medical record[22].	The provider documents all patient allergic reactions in the medical record then prepares a list of patients that have exhibited the reaction to determine if newly-instituted procedures for reducing risk were followed specifically for the PSO. The list of patients exhibiting the reaction prepared for reporting to the PSO could be PSWP, but the original patient medical records would not.

Meeting External Obligations

The Patient Safety Act Does Not Relieve a Provider From Its External Obligations

As discussed above, the Patient Safety Act does not permit providers to use the privilege and confidentiality protections for PSWP to shield records required by external recordkeeping or reporting requirements. To this end, the Patient Safety Act specifically states that it shall not limit the reporting of non-PSWP "to a Federal, State, or local governmental agency for public health surveillance, investigation, or other public health purposes or health oversight purposes" or a provider's recordkeeping obligations under Federal, State, or local law.[23] It further reinforces that the statute shall not be construed "to limit, alter or affect the requirements of Federal, State, or local law pertaining to information that is not" PSWP or "as preempting or otherwise affecting any State law requiring a provider to report information that is not" PSWP.[24] The NPRM explains that "the statute is quite specific that these protections do not relieve a provider from its obligation to comply with other legal, regulatory, accreditation, licensure, or other accountability requirements that it would otherwise need to meet." [25] It adds that the protected system established by the Patient Safety Act, "resides alongside but does not replace other information collection activities mandated by laws, regulations, and accrediting and licensing requirements as well as voluntary reporting activities that occur for the purpose of maintaining accountability in the health care system." [26] As further stated in the Preamble, "nothing in the final rule or the statute relieves a provider from his or her obligation to disclose information from such original records or other information that is not patient safety work product to comply with state reporting or other laws." [27]

HHS reiterates that any external reporting or recordkeeping obligations—whether they require a provider to report certain information, maintain specific records, or operate a separate system—cannot be met with PSWP. We also clarify that any information that is prepared to meet any Federal, state, or local health oversight agency requirements is not PSWP. As discussed above, the Patient Safety Act was intended to spur the development of *additional* information created through voluntary patient safety activities and to provide privilege and confidentiality protections for such *new* information. It was not intended to protect records generated or maintained as part of providers' existing mandatory information collection activities.[28] As stated in the Preamble, "The Department does not believe that the patient safety evaluation system enables providers to avoid transparency. . . . [T]he Patient Safety Act and the final rule have carefully assured that information generally available today remains available, such as medical records, original provider documents, and business records." [29]

HHS believes that most providers that engage with a PSO are doing so to further learning about patient safety and health care quality, consistent with the intent of the Patient Safety Act. Nevertheless, we are concerned about two ways that some providers may be attempting to misuse the Patient Safety Act protections to avoid their external obligations—in particular, to circumvent Federal or state regulatory obligations. First, some providers with recordkeeping or record maintenance requirements appear to be maintaining the required records only in their PSES and then refusing to disclose the records, asserting that the records in their PSES fulfill the applicable regulatory requirements while at the same time maintaining that the records are privileged and confidential PSWP. Second, some providers appear to develop records to meet external obligations outside of the PSES, place a duplicate copy of the required record into the PSES, then destroy the original

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that survey procedures include reviewing maintenance logs for significant medical equipment).

[20] As an example, 42 U.S.C. 1395cc(a)(1)(I)(iii) requires hospitals to maintain an on-call list of physicians available to provide treatment related to individuals with emergency medical conditions.

[21] Of note, while a written report of the patient safety incident prepared for reporting to a PSO may be PSWP, individuals who witnessed the event could still potentially disclose or testify about what they observed.

[22] There are various requirements regarding what information is required to be in the medical record. For example, CMS' Hospital CoP for medical record services includes that a hospital's medical record, "must contain information to justify admission and continued hospitalization, support the diagnosis, and describe the patient's progress and response to medication and services." 42 CFR 482.24(c).

[23] 42 U.S.C. 299b–21(7)(B)(iii).

[24] 42 U.S.C. 299b–22(g).

[25] 73 FR 8124, Oct. 5, 2007.

[26] *Id.*

[27] 73 FR 70786, Nov. 21, 2008.

[28] *See* 73 FR 70742, Nov. 21, 2008 ("Even when laws or regulations require the reporting of information regarding the type of events also reported to PSOs, the Patient Safety Act does not shield providers from their obligation to comply with such requirements.").

[29] 73 FR 70739, Nov. 21, 2008.

outside of the PSES and refuse to disclose the remaining copy of the information, asserting that the copy is confidential and privileged PSWP. The Patient Safety Act was not intended to give providers such methods to evade their regulatory obligations. Here, we clarify HHS' interpretation of how the Patient Safety Act prohibits providers from using the PSES to protect from disclosure records subject to such external obligations.

Original Patient and Provider Records

As stated in the Patient Safety Act and Patient Safety Rule, original patient and provider records, such as a patient's medical record, billing information, and discharge information, are not PSWP.[30] We now provide further clarification regarding what constitutes other types of original provider records. HHS interprets "original provider records" to include: (1) Original records (*e.g.,* reports or documents) that are required of a provider to meet any Federal, state, or local public health or health oversight requirement regardless of whether such records are maintained inside or outside of the provider's PSES; and (2) copies of records residing within the provider's PSES that were prepared to satisfy a Federal, state, or local public health or health oversight record maintenance requirement, if while the provider is obligated to maintain such information, the information is only maintained by the provider within the PSES (*e.g.,* if the records or documents that were being maintained outside the PSES to fulfill the external obligation were lost or destroyed).[31] This interpretation is consistent with Congressional intent in enacting the Patient Safety Act, the text of the statute and the regulation, and HHS' prior interpretation found in the NPRM and Preamble, all discussed above, supporting that the Patient Safety Act does not allow providers to be shielded from their external obligations.[32]

To further illustrate what information HHS would consider to be original provider records versus information that could be eligible to be PSWP, consider the following hypothetical examples in scenarios where a provider maintains specific forms regarding adverse events in order to satisfy a federal or state law obligation.

1. *The provider only maintains the forms outside of the PSES:* The forms are not PSWP. They are not PSWP both because they are an original provider record and because they are maintained separately from the PSES.

2. *The provider maintains the original forms outside of the PSES and places duplicate copies in the PSES for reporting to the PSO, so that further analysis using information in the forms can be conducted:* The forms outside of the PSES are not PSWP, for the reasons indicated above. The copies in the PSES would be PSWP, provided that: (1) The information otherwise meets the definition of PSWP and (2) the original forms continue to be maintained by the provider outside of the PSES.[33] If, while the provider is required to maintain the forms, the forms outside of the PSES become unavailable (*e.g.,* they are lost or destroyed), the duplicate copies of the forms in the provider's PSES will be "original provider records" that are no longer privileged and confidential PSWP so long as no duplicate copies of the forms are maintained outside of the PSES by the provider.[34]

3. *The provider only maintains the original forms in the PSES:* The forms are original provider records and not privileged and confidential PSWP. We note that it would be improper to maintain records collected for external reporting purposes solely within a PSES because this scenario would be a misuse of a PSES.

4. *The provider maintains the forms outside of the PSES and within the PSES extracts information from the forms to conduct further analysis:* The forms outside of the PSES are not PSWP, for the reasons indicated above. The analysis conducted inside the PSES, including the information extracted from the forms, is PSWP.

This clarification should not create problems for providers who have appropriately created and retained the original records required to satisfy their external obligations outside of a PSES. Those original records would be available to meet any external reporting requirements or needs.[35] In an effort to ensure that there is no need to obtain the copies that exist in the PSES for other purposes, providers should establish a mechanism to indicate where the original records can be located. Additionally, providers should exercise extreme caution before destroying any original records maintained outside of the PSES. A provider that destroys the original source documents upon which PSWP is based is not relieved of its obligations or any applicable consequences that may be imposed by other regulators if they fail to maintain the original records.

Copies of PSWP

To be clear, the above discussion of copies relates to information that begins as non-PSWP (*i.e.,* original patient or provider records and/or information that was collected, maintained, developed, or exists separately from the PSES). Consistent with the Patient Safety Rule's definition of PSWP, copies of information initially prepared as PSWP within the PSES are PSWP.[36] For example, if a provider originally develops information to improve patient safety in its PSES solely for reporting to the PSO, that information is PSWP. If the provider then makes a copy of this information for the PSO and retains another copy of it in its PSES, both the copy of the information disclosed to the PSO and the copy maintained in the provider's PSES are PSWP, and thus privileged and confidential under the Patient Safety Rule.

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[30] 42 U.S.C. 299b–21(7)(B)(i).

[31] If an original provider record is destroyed and the same information is maintained within the PSES, a provider may remove the original record from the PSES for the purpose of maintaining the information outside of the PSES.

[32] This interpretation of "original provider records" has developed, in part, due to new information about some providers' apparent attempts to avoid compliance with their external obligations, as discussed above, which has come to the attention of HHS since we initially developed the Patient Safety Act's implementing regulation. While broadly consistent with prior HHS interpretation that the Patient Safety Act does not provide a way for providers to evade their external obligations, HHS acknowledges that one aspect of this interpretation is different from that previously expressed, with respect to whether copies of non-PSWP in the PSES remain privileged and confidential PSWP if the original provider record outside of the PSES is unavailable. *See e.g.,* 73 FR 8124, Oct. 5, 2007 (indicating a copy in the PSES is protected and may not be disclosed when the original record outside of the PSES is unavailable).

[33] *See* 73 FR 70743, Nov. 21, 2008 ("Because information contained in these original records may be valuable to the analysis of a patient safety event, the important information must be allowed to be incorporated into the patient safety work product. However, the original information must be kept and maintained separately to preserve the original records for their intended purposes.").

[34] The circumstances in which information from a provider's PSES would not be protected as PSWP in this example are consistent with the statute's text that states a PSO shall not be compelled to disclose information—unless such information is: Identified, not PSWP, and not reasonably available from another source. *See* 42 U.S.C. 299b–22(d)(4)(A)(i).

[35] We note that this section focuses on requirements to maintain forms in an available fashion. To the extent an obligation only requires reporting and is fully satisfied after that reporting, a provider has fulfilled the reporting requirement, and the provider has no ongoing requirement to maintain the reported information, the subsequent collection of a form in the PSES and reporting to a PSO would protect the later form as PSWP because the external obligation has been fully satisfied.

[36] 42 CFR 3.20 (paragraph (1) of the PSWP definition) ("Except as provided in paragraph (2) of this definition, patient safety work product means any . . . [information] . . . (or copies of any of this material) . . . .").

Separate Systems

It has come to HHS' attention that the discussion in the Preamble regarding whether providers need to maintain multiple systems may have caused some confusion. Some commenters on the NPRM expressed concern that providers would need to maintain two duplicate systems: One PSES for information that the provider assembles or develops for reporting to a PSO and a second system containing the same information if the provider is unsure at the time the information is prepared for reporting to the PSO whether that information may be required in the future to fulfill a state law obligation. In response to this concern, the Preamble discusses a way that the Patient Safety Rule allows for information that was PSWP to no longer be PSWP.[37] This process, sometimes referred to as the "drop out" provision, provides that PSWP "assembled or developed by a provider for reporting to a PSO may be removed from" a PSES and no longer be considered PSWP if: "[t]he information has not yet been reported to a PSO" and "[t]he provider documents the act and date of removal of such information from the" PSES.[38] Once removed from the PSES following this procedure, the information could be used for other purposes, such as to meet state law obligations.

As indicated above, the drop out provision is intended as a safety valve for providers who are unsure at the time that information is being prepared for reporting to the PSO whether similar information would, at a later time, be needed for an external obligation. It provides some flexibility for providers as they work through their various external obligations, as information assembled or developed for reporting to the PSO can reside as PSWP within the provider's PSES until the provider makes a future determination as to whether that information must be used to meet an external obligation.[39] It is intended to be used on a case-by-case basis. Under the drop out provision, if the provider later determines the information within its PSES that had originally been assembled or developed for reporting to a PSO will be instead used for an external obligation, it is removed from the PSES and is no longer PSWP. This means it is no longer privileged or confidential under the Patient Safety Act and Patient Safety Rule.[40] If the provider instead decides to report the information to a PSO, the information remains PSWP (so long as it meets the requirements for being PSWP, including that it is not an original patient or provider record) and cannot be permissibly disclosed for any reason, except in accordance with the disclosure permissions described in the Patient Safety Act and Patient Safety Rule.[41] The Preamble thus explains how the drop out provision eliminates the need for a provider to maintain two systems with duplicate information: A PSES containing PSWP and a separate system containing any of that same information where the provider has yet to determine whether it will be needed in the future for another purpose.

Nevertheless, we reemphasize that where records are mandated by a Federal or State law requirement or other external obligation, they are not PSWP. Thus, a provider should maintain at least two systems or spaces: A PSES for PSWP and a separate place where it maintains records for external obligations.[42] As discussed above, the Patient Safety Act encourages providers to prepare, analyze, and share information beyond what they are mandated to do. As such, it is expected that most of the information in a PSES would be originally created by providers as part of their voluntary participation with a PSO.

Shared Responsibility

As described above, the protected system established under the Patient Safety Act works in concert with the external obligations of providers to ensure accountability and transparency while encouraging the improvement of patient safety and reduction of medical errors through a culture of safety. It is the provider's ultimate responsibility to understand what information is required to meet all of its external obligations. If a provider is uncertain what information is required of it to fulfill an external obligation, the provider should reach out to the external entity to clarify the requirement. HHS has heard anecdotal reports of providers, PSOs, and regulators working together to ensure that the regulators can obtain the information they need without requesting that providers impermissibly disclose PSWP. HHS encourages such communication. Regulatory agencies and other entities requesting information of providers or PSOs are reminded that, subject to the limited exceptions set forth in the Patient Safety Act and Patient Safety Rule, PSWP is privileged and confidential, and it may not be used to satisfy external obligations. Therefore, such entities should not demand PSWP from providers or PSOs.

Some requirements are clear and discrete, which makes it relatively easy for providers to understand what information is mandated, determine what additional information they want to prepare for reporting to a PSO, and to separate the two categories of information. Examples of clear and discrete requirements would include requirements for a provider to fill out a particular form or to provide a document containing specified data points. However, HHS is aware that some requirements are more ambiguous or broad, thus creating uncertainty about the information required to satisfy them. Particularly where laws or regulations may be vague, it is imperative that the regulators work with providers so that the regulators obtain the information they need, and that providers sufficiently understand what is required of them so that they can satisfy their obligations and voluntarily report additional information to a PSO. Where a variety of information could potentially satisfy an external obligation, and where a provider reports similar information to the PSO, the provider may find it helpful to document which information collection activities it does to fulfill its external requirements and which other activities it does in the PSES, to help ensure confidentiality and privilege of the PSWP.

Later Developing Requirements

As discussed above, providers should work with regulatory bodies and any other entities with which they have obligations to understand in advance the exact information they will need to satisfy their external obligations. That way, providers can plan ahead to create and maintain any information needed to fulfill their obligations separately from their PSES. However, even if providers and regulators cooperate fully, HHS is aware that situations could arise where a provider has collected information for reporting to the PSO and where the records at issue were not required by any external obligation at the time they were created, but where a regulator later seeks the same information as part of its oversight or investigatory responsibilities. The information at issue would be PSWP and would be privileged and confidential, but the provider may still have several options to satisfy its obligation. If the information is eligible for the drop out provision (including that the provider has not yet reported the information to a PSO), then the provider may follow the drop out provision discussed above to remove the information from its PSES and report or maintain the information outside of the PSES, to satisfy the regulator's request. This information is no longer PSWP. If the provider has reported the information to a PSO or the information is otherwise not subject to the drop out provision, the Patient Safety Act and Patient Safety Rule provide several options that the provider may want to consider, which are discussed below.

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[37] *See e.g.,* 73 FR 70742, Nov. 21, 2008.

[38] 42 CFR 3.20(2)(ii).

[39] *See* 73 FR 70742, Nov. 21, 2008 (Referring to the documentation of date and purpose of collection within a PSES, "(p)roviders have the flexibility to protect this information as patient safety work product within their patient safety evaluation system while they consider whether the information is needed to meet external reporting obligations. Information can be removed from the patient safety evaluation system before it is reported to a PSO to fulfill external reporting obligations.").

[40] *Id.* ("Once the information is removed, it is no longer patient safety work product and is no longer subject to the confidentiality provisions.").

[41] 42 U.S.C. 299b–22(c); 42 CFR 3.204(b), 3.206(b).

[42] "The Patient Safety Act establishes a protected space or system that is separate, distinct, and resides alongside but does not replace other information collection activities . . . ." 73 FR 70742, Nov. 21, 2008; *see also* 73 FR 8124, Oct. 5, 2007.

1. *Did the provider mistakenly enter information that is not PSWP into its PSES?* The provider may want to first ensure that the information being requested meets the definition of PSWP. If the provider determines that the information now required is not PSWP (*e.g.*, an original patient record was accidentally placed in the PSES), the provider can remove the information from its PSES. If the information does not meet the definition of PSWP, it is not privileged and confidential under the Patient Safety Act, and the Patient Safety Act places no limitations on the provider from further releasing it. If the information is not PSWP and the only copy of the information is in the PSO's PSES (*i.e.*, the provider did not retain a copy outside of or in its PSES), then the Patient Safety Act places no limitations on the PSO from releasing it back to the provider.

2. *Is there a disclosure exception that may be used to permissibly disclose the PSWP?* For example:

- Can the provider obtain authorization from each identified provider to disclose the information, in accordance with 42 CFR 3.206(b)(3)?
- Is the information subject to the disclosure permission to the FDA at 42 CFR 3.206(b)(7)?
- Is the information being voluntarily disclosed to an accrediting body, pursuant to 42 CFR 3.206(b)(8)?

While these disclosure permissions are available in the limited circumstances described in the Patient Safety Rule, relying upon a disclosure permission should not be a provider's primary method to meet an external obligation. As stated in the Preamble, with respect to the FDA disclosure permission, "However, we emphasize that, despite this disclosure permission, we expect that most reporting to the FDA and its regulated entities will be done with information that is not patient safety work product, as is done today. This disclosure permission is intended to allow for reporting to the FDA or FDA-regulated entity in those special cases where, only after an analysis of patient safety work product, does a provider realize it should make a report." [43] [44] HHS has the same expectation for other external obligations, as well.

3. *Can the provider recreate the information or conduct an identical analysis from non-PSWP outside of the PSES?* If a provider is instructed to compile specified information but the provider previously assembled such information within its PSES and reported it to a PSO, this does not prevent a provider from creating the requested information using non-PSWP. As indicated in the NPRM, "[t]hose who participated in the collection, development, analysis, or review of the missing information or have knowledge of its contents can fully disclose what they know . . ." [45] Similarly, although an analysis originally conducted in the PSES cannot become non-PSWP under the drop out provision, if a provider is informed that a certain analysis is needed to meet an external obligation, the Patient Safety Act indicates that a provider could conduct a new analysis with non-PSWP to satisfy this requirement, "regardless of whether such additional analysis involves issues identical to or similar to those for which information was reported to or assessed by" a PSO or PSES.[46]

Providers are reminded that they should exercise care to ensure that even if the information is not privileged and confidential under the Patient Safety Act or if a permissible disclosure of PSWP has been identified, the intended disclosure of the information is not impermissible under any other law (*e.g.*, the HIPAA Privacy Rule.)

Dated: May 19, 2016.

Andrew Bindman,

AHRQ Director.

Jocelyn Samuels,

Director, OCR.

[FR Doc. 2016–12312 Filed 5–20–16; 5:15 pm]

BILLING CODE 4160–90–P

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[43] 73 FR 70782, Nov. 21, 2008.

[44] Following publication of the Patient Safety Rule, HHS issued guidance on meeting mandatory reporting obligations to the FDA. *See* "Department of Health and Human Services Guidance Regarding Patient Safety Organizations' Reporting Obligations and the Patient Safety and Quality Improvement Act of 2005" available at *www.pso.ahrq.gov.*

[45] 73 FR 8124, Oct. 5, 2007.

[46] 42 U.S.C. 299b–22(h).

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–8435]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4149.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Maine: Andrews Island, Knox County	230967	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	July 6, 2016	July 6, 2016.
Appleton, Town of, Knox County	230073	July 22, 1975, Emerg; December 4, 1985, Reg; July 6, 2016, Susp.	......do*	Do.
Bar Island, Knox County	230974	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Birch Island, Knox County	230966	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Brig Ledge, Knox County	230947	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Camden, Town of, Knox County	230074	May 21, 1975, Emerg; May 4, 1988, Reg; July 6, 2016, Susp	......do	Do.
Camp Cove Ledge, Knox County	230945	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Camp Island, Knox County	230962	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Clam Ledges, Knox County	230970	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Crescent Island, Knox County	230955	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Criehaven, Township of, Knox County	231034	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Crow Island, Knox County	230978	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Cushing, Town of, Knox County	230224	May 7, 1976, Emerg; July 16, 1990, Reg; July 6, 2016, Susp.	......do	Do.
Dix Island, Knox County	230965	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
East Goose Rock, Knox County	230990	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Egg Rock, Knox County	230991	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Fisherman Island, Knox County	230953	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Flag Island, Knox County	230972	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Fort Kent, Town of, Aroostook County	230019	April 10, 1974, Emerg; June 4, 1980, Reg; July 6, 2016, Susp.	......do	Do.
Friendship, Town of, Knox County	230225	September 13, 1978, Emerg; July 16, 1990, Reg; July 6, 2016, Susp.	......do	Do.
Goose Island, Knox County	230987	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Gooseberry Knob, Knox County	230959	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Graffam Island, Knox County	230975	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Great Pond Island, Knox County	230961	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Green Ledge, Knox County	230944	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Herring Ledge, Knox County	230937	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Hewett Island, Knox County	230971	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
High Island, Knox County	230964	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
High Ledge, Knox County	230946	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Hog Island, Knox County	230934	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Hope, Town of, Knox County	230226	April 5, 1976, Emerg; February 19, 1986, Reg; July 6, 2016, Susp.	......do	Do.
Large Green Island, Knox County	230936	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Lasell Island, Knox County	230983	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Little Green Island, Knox County	230935	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Little Hurricane Island, Knox County	230973	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Little Pond Island, Knox County	230960	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Little Two Bush Island, Knox County	230980	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Marblehead Island, Knox County	230954	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Mark Island, Knox County	230988	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Matinicus Isle Plantation, Knox County	230603	April 25, 1975, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Metinic Green Island, Knox County	230932	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Metinic Island, Knox County	230931	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Mink Island, Knox County	230976	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Mouse Island, Knox County	230986	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Muscle Ridge Township, Knox County	230979	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Nettle Island, Knox County	230969	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
North Haven, Town of, Knox County	230228	April 2, 1976, Emerg; July 16, 1991, Reg; July 6, 2016, Susp.	......do	Do.
Oak Island, Knox County	230957	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Otter Island, Knox County	230956	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Owls Head, Town of, Knox County	230075	July 30, 1975, Emerg; June 19, 1989, Reg; July 6, 2016, Susp.	......do	Do.
Pleasant Island, Knox County	230977	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Pudding Island, Knox County	230941	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Ragged Island, Knox County	230940	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Robinson Rock, Knox County	230989	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Rockland, City of, Knox County	230076	October 31, 1975, Emerg; January 5, 1989, Reg; July 6, 2016, Susp.	......do	Do.
Rockport, Town of, Knox County	230077	July 2, 1975, Emerg; May 4, 1989, Reg; July 6, 2016, Susp.	......do	Do.
Saddle Island, Knox County	230982	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Saint George, Town of, Knox County	230229	March 30, 1976, Emerg; September 1, 1989, Reg; July 6, 2016, Susp.	......do	Do.
Seal Island, Knox County	230948	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Shag Ledge, Knox County	230942	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
South Thomaston, Town of, Knox County	230078	July 23, 1975, Emerg; May 17, 1989, Reg; July 6, 2016, Susp.	......do	Do.
Spectacle Island, Knox County	230963	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
The Nubble, Knox County	230933	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Thomaston, Town of, Knox County	230079	May 12, 1975, Emerg; December 4, 1985, Reg; July 6, 2016, Susp.	......do	Do.
Union, Town of, Knox County	230080	July 3, 1975, Emerg; March 18, 1987, Reg; July 6, 2016, Susp.	......do	Do.
Vinalhaven, Town of, Knox County	230230	April 18, 1975, Emerg; March 1, 1987, Reg; July 6, 2016, Susp.	......do	Do.
Warren, Town of, Knox County	230081	June 12, 1975, Emerg; April 17, 1985, Reg; July 6, 2016, Susp.	......do	Do.
Washington, Town of, Knox County	230082	December 4, 2003, Emerg; March 1, 2004, Reg; July 6, 2016, Susp.	......do	Do.
Wheeler Big Rock, Knox County	230939	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Wooden Ball Island, Knox County	230950	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Yellow Ledge, Knox County	230981	April 4, 1979, Emerg; April 30, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Massachusetts: Bedford, Town of, Middlesex County.	255209	April 2, 1971, Emerg; September 7, 1973, Reg; July 6, 2016, Susp.	......do	Do.
Billerica, Town of, Middlesex County	250183	August 18, 1972, Emerg; November 5, 1980, Reg; July 6, 2016, Susp.	......do	Do.
Burlington, Town of, Middlesex County	250185	January 2, 1976, Emerg; July 5, 1984, Reg; July 6, 2016, Susp.	......do	Do.
Lexington, Town of, Middlesex County	250198	July 31, 1975, Emerg; June 1, 1978, Reg; July 6, 2016, Susp.	......do	Do.
Tewksbury, Town of, Middlesex County	250218	December 10, 1971, Emerg; July 18, 1977, Reg; July 6, 2016, Susp.	......do	Do.
Wilmington, Town of, Middlesex County	250227	July 1, 1974, Emerg; June 15, 1982, Reg; July 6, 2016, Susp.	......do	Do.
Region VI				
Louisiana: Bastrop, City of, Morehouse Parish.	220127	July 2, 1975, Emerg; December 16, 1980, Reg; July 6, 2016, Susp.	......do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Bonita, Village of, Morehouse Parish	220316	April 3, 1997, Emerg; April 1, 2007, Reg; July 6, 2016, Susp.	......do	Do.
Collinston, Village of, Morehouse Parish	220399	June 17, 1991, Emerg; N/A, Reg; July 6, 2016, Susp.	......do	Do.
Mer Rouge, Village of, Morehouse Parish	220128	May 3, 1973, Emerg; June 27, 1978, Reg; July 6, 2016, Susp.	......do	Do.
Morehouse Parish, Unincorporated Areas	220367	April 14, 1983, Emerg; October 15, 1985, Reg; July 6, 2016, Susp.	......do	Do.
New Mexico: Dona Ana County, Unincorporated Areas.	350012	January 19, 1976, Emerg; September 27, 1991, Reg; July 6, 2016, Susp.	......do	Do.
Hatch, Village of, Dona Ana County	350013	December 10, 1974, Emerg; January 3, 1986, Reg; July 6, 2016, Susp.	......do	Do.
Las Cruces, City of, Dona Ana County	355332	July 24, 1970, Emerg; June 11, 1971, Reg; July 6, 2016, Susp.	......do	Do.
Mesilla, Town of, Dona Ana County	350113	March 7, 1975, Emerg; May 28, 1985, Reg; July 6, 2016, Susp.	......do	Do.
Sunland Park, City of, Dona Ana County	350147	N/A, Emerg; November 8, 2006, Reg; July 6, 2016, Susp.	......do	Do.

*.....do = Ditto.
Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: May 12, 2016.

Michael M. Grimm,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

[Docket No. FWS–HQ–ES–2013–0052]

RIN 1018–AZ53

Inclusion of Four Native U.S. Freshwater Turtle Species in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are listing the common snapping turtle (*Chelydra serpentina*), Florida softshell turtle (*Apalone ferox*), smooth softshell turtle (*Apalone mutica*), and spiny softshell turtle (*Apalone spinifera*) in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention), including live and dead whole specimens, and all readily recognizable parts, products, and derivatives. Listing these four native U.S. freshwater turtle species (including their subspecies, except *Apalone spinifera atra,* which is already included in Appendix I of CITES) in Appendix III of CITES is necessary to allow us to adequately monitor international trade in these species; to determine whether exports are occurring legally, with respect to State and Federal law; and to determine whether further measures under CITES or other laws are required to conserve these species and their subspecies.

DATES: This listing is effective November 21, 2016.

ADDRESSES: You may obtain information about permits for international trade in these species and their subspecies by contacting the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone: 703–358–2104 or 800–358–2104; facsimile: 703–358–2281; email: *managementauthority@fws.gov*; Web site: *http://www.fws.gov/international.*

FOR FURTHER INFORMATION CONTACT: Craig Hoover, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, MS: IA; 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095; facsimile 703–358–2298. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Service's International Wildlife Trade Program convened a freshwater turtle workshop in St. Louis, Missouri, in September 2010, to discuss the pressing management, regulatory, scientific, and enforcement needs associated with the harvest and trade of freshwater turtles in the United States. In response to one of the recommendations put forth at the St. Louis workshop, in November 2011, the Service hosted a workshop in Baton Rouge, Louisiana, to develop best management practices for turtle farms operating in the United States. All 16 States with turtle farms attended the 2011 workshop. Information on these workshops can be found on our Web site at *http://www.fws.gov/international/animals/freshwater-turtles.html* or from the Service's International Wildlife Trade Program (see **FOR FURTHER INFORMATION CONTACT**).

On October 30, 2014, we published in the **Federal Register** (79 FR 64553) a document proposing listing the common snapping turtle (*Chelydra serpentina*), Florida softshell turtle (*Apalone ferox*), smooth softshell turtle (*Apalone mutica*), and spiny softshell turtle (*Apalone spinifera*), including their subspecies, except *Apalone spinifera atra,* which is already included in Appendix I of CITES, in Appendix III of CITES. We accepted public comments on that proposal for 60 days, ending December 29, 2014. We have reviewed and considered all public comments we received on the proposal (see the Summary of Comments and Our Responses section, below). Our final decision reflects consideration of the information and opinions we have received.

Species Information

Common Snapping Turtle

The common snapping turtle (*Chelydra serpentina,* Linnaeus 1758) is the second-largest freshwater turtle species native to the United States. Currently, two subspecies are widely recognized: *C. s. osceola* (Stejneger, 1918), distributed in the Florida peninsula, and *C. s. serpentina* (Linnaeus, 1758), distributed throughout the remainder of the species' range, which encompasses most of the eastern two-thirds of the United States and portions of southern Canada, including Nova Scotia. The species has been introduced into the wild outside its range both within and outside the United States, including in China and Taiwan, where it is also bred on turtle farms. The common snapping turtle is easily recognized by a roughly textured black to grey carapace (top shell), a long tail studded with large saw-toothed tubercles, large claws, and a large head with strong jaws and a sharp beak.

The species is readily distinguished from the alligator snapping turtle (*Macrochelys temminckii*) because the latter has a larger head, hooked beak, a smooth tail, and three distinct keels on the carapace. There are other morphological differences as well. The common snapping turtle inhabits a wide variety of freshwater habitats, including rivers, ponds, lakes, swamps, and marshes, although it prefers slow-moving aquatic habitats with mud or sand bottoms, abundant vegetation, and submerged tree branches, trunks, and brush. Common snapping turtles feed on a wide variety of both plants and animals (Ernst and Lovich 2009, pp. 9, 132–133).

Florida Softshell Turtle

The Florida softshell turtle (*Apalone ferox,* Schneider 1783) is one of three species of softshell turtle native to the United States. The Florida softshell, the largest North American softshell turtle, occurs from southern South Carolina, through southern Georgia and Florida, and west into the extreme southern portions of Alabama. No subspecies are currently recognized. Females may reach a maximum carapace length (SCLmax) of 67.3 centimeters, over twice the size of males, which may reach 32.4 centimeters SCLmax. The leathery skin-covered carapace has rough, rounded tubercles (bumps) on its front edge; the limbs are grey to brown with lighter-colored mottling. The feet are webbed, and the species has an extended nose tip. In large specimens, the head can grow disproportionately large compared to the body. The Florida softshell inhabits calm waters, including rivers, swamps, marshes, lakes, and ponds. The species may spend extended periods of time submerged, buried in the silty or sandy bottom. The Florida softshell is largely carnivorous, eating a variety of aquatic and sometimes terrestrial animals, although it may also consume vegetation (Ernst and Lovich 2009, p. 611).

Smooth Softshell Turtle

The smooth softshell turtle (*Apalone mutica,* Le Sueur 1827) is the smallest of the three softshell species native to the United States. The species is generally found in streams, rivers, and channels. It inhabits the Ohio River drainage (Ohio, Indiana, and Illinois), the upper Mississippi River watershed (Minnesota and Wisconsin), the Missouri River in the Dakotas, south through the watershed and eventually spreading to the western Florida Panhandle, and west to Central Texas (including all States between these areas). The smooth softshell is considered extirpated in Pennsylvania, where it previously inhabited the Allegheny River. An isolated population exists in New Mexico's Canadian River drainage. Two subspecies are recognized: The smooth softshell turtle (*A. m. mutica;* Le Sueur 1827) and the Gulf Coast smooth softshell turtle (*A. m. calvata;* Webb 1959). Females may reach 35.6 centimeters SCLmax, and males may reach 26.6 centimeters SCLmax. The carapaces of males may have blotchy dark markings, and a yellow stripe is present on each side of the head; females have darkly mottled carapaces, and the yellow head stripe may be faint or nonexistent in older animals. The smooth softshell has webbed feet and an extended nose tip. The species is fully aquatic, only leaving the water to nest or bask. Smooth softshells consume insect larvae, other aquatic invertebrates, small fish, and plant material (Ernst and Lovich 2009, pp. 619–620).

Spiny Softshell Turtle

The spiny softshell turtle (*Apalone spinifera,* Le Sueur 1827) is a small softshell with webbed feet and large claws. It has a leathery shell colored from brown to sand to grey, with dark black ocelli or blotches and a pair of light stripes on the side of its head. Limbs are grey and may have dark streaks or spots. The population of the spiny softshell in the United States is divided into six subspecies: The spiny softshell turtle (*A. s. spinifera,* Le Sueur 1827), Gulf Coast spiny softshell (*A. s. aspera,* Agassiz 1857), Texas spiny softshell (*A. s. emoryi,* Agassiz 1857), Guadalupe spiny softshell (*A. s. guadalupensis,* Webb 1962), western spiny softshell (*A. s. hartwegi,* Conant and Goin 1948), and pallid spiny softshell (*A. s. pallida,* Webb 1962). An additional subspecies, the Cuatro Cienegas spiny softshell (*A. s. atra* [=*Apalone atra*], Webb and Legler 1960), occurs in Mexico and is listed in Appendix I of CITES and as endangered under the U.S. Endangered Species Act (as *Trionyx ater*) (see title 50 of the Code of Federal Regulations (CFR) at § 17.11(h)).

The spiny softshell inhabits the largest range of the three softshell turtles of North America, occurring from New York, south to Florida, west through Texas to New Mexico, and over most of the midwestern United States, including the States bordering the Great Lakes, and extreme southern portions of Canada, and naturally in northern portions of Mexico. It has also been introduced widely in other parts of Mexico. Disjunct populations also are found from New Mexico to California and in Montana and Wyoming. Isolated populations are found in several States. The spiny softshell inhabits creeks and rivers, but also occurs in other types of water bodies, including artificial bodies, as long as the bottom is sandy or muddy to support its burrowing behavior. The species is almost entirely aquatic and largely carnivorous; its reported list of food items is extensive and includes insects, molluscs, and other invertebrates, fish, amphibians, and small snakes. It will also consume plant material (Ernst and Lovich 2009, pp. 632–633).

For further information on these species, including their subspecies, you may refer to our proposed rule published in the **Federal Register** on October 30, 2014 (79 FR 64553).

CITES

CITES, an international treaty, regulates the import, export, re-export, and introduction from the sea of certain animal and plant species. Currently 181 countries and the European Union have ratified, accepted, approved, or acceded to CITES; these 182 entities are known as Parties.

The text of the Convention and the official list of all species included in its three Appendices are available from the CITES Secretariat's Web site at *http://www.cites.org* or upon request from the Division of Management Authority at the address provided in **FOR FURTHER INFORMATION CONTACT**, above.

Section 8A of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), designates the Secretary of the Interior as the U.S. Management

Authority and U.S. Scientific Authority for CITES. These authorities have been delegated to the U.S. Fish and Wildlife Service. The original U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10465, February 22, 1977), after the first meeting of the Conference of the Parties (CoP) was held. The CoP meets every 2 to 3 years to vote on proposed resolutions and decisions that interpret and implement the text of the Convention and on amendments to the list of species in the CITES Appendices. The last major revision of U.S. CITES regulations was in 2014 (79 FR 30399, May 27, 2014) and incorporated provisions from applicable resolutions and decisions adopted at meetings of the Conference of the Parties up to and including the fifteenth meeting (CoP15), which took place in 2010. The U.S. CITES implementing regulations are codified at 50 CFR part 23.

CITES Appendices

Species covered by the Convention are listed in one of three Appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade, and are generally prohibited from commercial trade. Appendix II includes species that, although not necessarily threatened with extinction now, may become so unless the trade is strictly controlled. It also lists species that must be regulated so that trade in other listed species may be brought under effective control (*e.g.*, because of similarity of appearance to other listed species). Appendix III includes native species, identified by any Party, that are regulated domestically to prevent or restrict exploitation, where the Party requests the help of other Parties to monitor and control the trade of the species.

To include a species in or remove a species from Appendices I or II, a Party must propose an amendment to the Appendices for consideration at a meeting of the CoP. The adoption of such a proposal requires approval of at least two-thirds of the Parties present and voting. However, a Party may add a native species to Appendix III independently at any time, without the vote of other Parties, under Articles II and XVI of the Convention. Likewise, if the status of an Appendix-III species improves or new information shows that it no longer needs to be listed, the listing country can remove the species from Appendix III without consulting the other CITES Parties.

Inclusion of native U.S. species in Appendix III provides the following benefits:

(1) An Appendix-III listing ensures the assistance of the other CITES Parties, through the implementation of CITES permitting requirements in controlling international trade in these species.

(2) Listing these species in Appendix III enhances the enforcement of State and Federal conservation measures enacted for the species by regulating international trade in the species. Shipments containing CITES-listed species receive greater scrutiny from border officials in both the exporting and importing countries. Many foreign countries have limited legal authority and resources to inspect shipments of non-CITES-listed wildlife. Appendix-III listings for U.S. species will give these importing countries the legal basis to inspect such shipments, and to deal with CITES and national violations when they detect them.

(3) Another practical outcome of listing a species in Appendix III is that better records are kept and international trade in the species is better monitored. We will gain and share improved information on such trade with State fish and wildlife agencies, and others who have jurisdiction over resident populations of the Appendix-III species. They will then be able to better determine the impact of trade on the species and the effectiveness of existing State management activities, regulations, and cooperative efforts. International trade data and other relevant information gathered as a result of an Appendix-III listing will help policymakers determine whether we should propose the species for inclusion in Appendix II, or remove it from or retain it in Appendix III.

(4) When any live CITES-listed species (including an Appendix-III species) is exported (or imported), it must be packed and shipped according to the International Air Transport Association (IATA) Live Animals Regulations or the *CITES Guidelines for the non-air transport of live wild animals and plants* (available from the CITES Secretariat's Web site at *https://www.cites.org/eng/resources/transport/index.php*) to reduce the risk of injury and cruel treatment. This requirement helps to ensure the survival and health of the animals when they are shipped internationally.

Listing a Native U.S. Species in Appendix III

Article II, paragraph 3, of CITES states that "Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other Parties in the control of trade." Article XVI, paragraph 1, of the Convention states further that "any Party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of subparagraph (b) of Article I."

At the ninth meeting of the Conference of the Parties to CITES (CoP9), held in the United States in 1994, the Parties adopted Resolution Conf. 9.25 (amended at the 10th, 14th, 15th, and 16th meetings of the CoP), which provides further guidance to Parties for the listing of their native species in Appendix III. The Resolution, which is the basis for our criteria for listing species in Appendix III provided in our regulations at 50 CFR 23.90(c), recommends that a Party:

(a) Ensure that (i) the species is native to its country; (ii) its national regulations are adequate to prevent or restrict exploitation and to control trade, for the conservation of the species, and include penalties for illegal taking, trade, or possession and provisions for confiscation; and (iii) its national enforcement measures are adequate to implement these regulations;

(b) Determine that, notwithstanding these regulations and measures, circumstances indicate that the cooperation of the Parties is needed to control illegal trade; and

(c) Inform the Management Authorities of other range States, the known major importing countries, the Secretariat, and the Animals Committee or the Plants Committee that it is considering the inclusion of the species in Appendix III and seek their opinion on the potential effects of such inclusion.

Therefore, we apply the following criteria in deciding to list U.S. species in Appendix III as outlined at 50 CFR 23.90(c):

(1) The species must be native to the United States.

(2) The species must be protected under State, tribal, or Federal regulations to prevent or restrict exploitation and control trade, and the laws or regulations are being implemented.

(3) The species is in international trade, and circumstances indicate that

the cooperation of other Parties would help to control illegal trade.

(4) We must inform the Management Authorities of other range countries, the known major importing countries, the Secretariat, and the Animals Committee or the Plants Committee that we are considering the listing and seek their opinions on the potential effects of the listing.

We have complied with the criteria outlined at 50 CFR 23.90(c) as follows:

§ 23.90(c)(1): These four freshwater turtle species (including their subspecies, except *Apalone spinifera atra,* which is already included in Appendix I of CITES) are native to the United States.

§ 23.90(c)(2): These four native U.S. freshwater turtle species are regulated by State laws and regulations throughout their ranges to prevent or restrict exploitation and control trade, and the laws and regulations are being implemented. For further information on the conservation status of these species, including their subspecies, you may refer to our proposed rule published in the **Federal Register** on October 30, 2014 (79 FR 64553). In response to our proposed rule (October 30, 2014; 79 FR 64553), 10 of the comments we received were from State agencies (see the Summary of Comments and Our Responses section, below). Our final decision reflects consideration of the additional information and opinions we have received from those State agencies.

§ 23.90(c)(3): We have documented these four native U.S. freshwater turtle species in international trade. In our proposed rule published in the **Federal Register** on October 30, 2014 (79 FR 64553), we describe recent trends in exportations of: Live common snapping turtles and meat, live Florida softshell turtles and eggs, live smooth softshell turtles, and live spiny softshell turtles. We update that information as follows:

TABLE 1—U.S. EXPORTATIONS OF LIVE COMMON SNAPPING TURTLES 2009–2014

	2009	2010	2011	2012	2013	2014
Live common snapping turtles exported from the United States	655,549	709,869	811,717	1,081,246	1,261,426	1,352,289

TABLE 2—U.S. EXPORTATIONS OF LIVE FLORIDA SOFTSHELL TURTLES 2009–2014

	2009	2010	2011	2012	2013	2014
Live Florida softshell turtles exported from the United States	214,787	209,453	367,629	436,995	207,185	213,453

TABLE 3—U.S. EXPORTATIONS OF LIVE SPINY SOFTSHELL TURTLES 2009–2014

	2009	2010	2011	2012	2013	2014
Live spiny softshell turtles exported from the United States	46,117	56,056	55,713	71,740	69,581	5,487

TABLE 4—U.S. EXPORTATIONS OF LIVE SMOOTH SOFTSHELL TURTLES 2009–2014

	2009	2010	2011	2012	2013	2014
Live smooth softshell turtles exported from the United States	200	0	0	230	0	0

Although a significant proportion of the exported live specimens originated from turtle farms, the need for increased cooperation from other parties to control illegal trade is based upon the following:

- Despite varying export levels of the species from year to year, there is potential for significant increases in export demands in the future.
- Even with extensive turtle farming operations, the harvest pressure on wild turtle populations remain high (see *Issue 30* and *Issue 33* below).
- Increased cooperation will help the U.S. better understand temporal trends and the source of exported turtles.
- The level of wild harvest utilized to maintain turtle farm production is unknown.

§ 23.90(c)(4): We have consulted with the CITES Secretariat and the Animals Committee regarding our proposal to list these four native U.S. freshwater turtle species in Appendix III. The Secretariat and the Animals Committee have informed us that our proposal to list these four native U.S. freshwater turtle species in Appendix III is consistent with Resolution Conf. 9.25 (Rev. CoP16), and they have not raised any objections to this proposed listing. Further, we have also informed the Management Authorities of other range countries. Mainland China and Hong Kong are the major importers of these species from the United States. Accordingly, we have sought out their views on the potential effects of including these species in CITES Appendix III. Mainland China referred our request to Hong Kong and Hong Kong replied that they have "no strong view" on our proposal to list these four native U.S. freshwater turtle species in Appendix III. Hong Kong suggested that we consider that visual identification guides and protocols for genetic testing on these four native U.S. freshwater turtle species be available (and preferably shared with the Parties) in advance of the listing.

For further information about the listing process, you may refer to our proposed rule published in the **Federal Register** on October 30, 2014 (79 FR 64553).

Permits and Other Requirements

The export of an Appendix-III species listed by the United States requires an export permit issued by the Service's

Division of Management Authority (DMA). DMA will issue a permit only if: The applicant obtained the specimen(s) legally, in compliance with applicable U.S. laws, including relevant State and tribal wildlife laws and regulations; and live specimens are packed and shipped in accordance with the IATA Live Animals Regulations or the *CITES Guidelines for the non-air transport of live wild animals and plants* (available from the CITES Secretariat's Web site at *https://www.cites.org/eng/resources/transport/index.php*) to reduce the risk of injury, damage to health, or cruel treatment. DMA, in determining if an applicant legally obtained a specimen, may consult relevant State, tribal, and Federal agencies. Because the conservation and management of these species is primarily under the jurisdiction of State and tribal agencies, we may consult those agencies to ensure that specimens destined for export were obtained in compliance with State and tribal laws and regulations. Unlike species listed in Appendices I and II, no non-detriment finding is required from the Service's Division of Scientific Authority (DSA) for export of an Appendix-III species. However, DSA will monitor and evaluate the trade, to decide if there is a conservation concern that would require any further action on our part. With a few exceptions, any shipment containing wildlife must enter or exit the United States at a designated port for wildlife, must be declared to a Service Office of Law Enforcement (OLE) Wildlife Inspector upon import, export, or re-export, and must comply with all applicable regulations.

Permits, Findings, and Fees

To apply for a CITES permit, an individual or business is required to submit a completed CITES export permit application to DMA (with check or money order to cover the application fee). You may obtain information about CITES permits from our Web site at *http://www.fws.gov/international/* or from DMA (see **ADDRESSES**, above). We will review the application to decide if the export meets the applicable criteria at 50 CFR 23.60.

In addition, live animals must be shipped to reduce the risk of injury, damage to health, or cruel treatment. We carry out this CITES requirement by stating clearly on all CITES permits that shipments must comply with the IATA Live Animals Regulations or the *CITES Guidelines for the non-air transport of live wild animals and plants* (available from the CITES Secretariat's Web site at *https://www.cites.org/eng/resources/transport/index.php*). The Service's Office of Law Enforcement (OLE) is authorized to inspect shipments of CITES-listed species at the time of export to ensure that they comply with these regulations. Additional information on permit requirements is available from DMA (see **ADDRESSES**, above). Additional information on designated ports for wildlife, declaration of shipments, inspection, and clearance of shipments is available upon request from OLE; contact the port in which shipment will obtain clearance (*http://www.fws.gov/le/inspection-offices.html*); email: *lawenforcement@fws.gov;* Web site: *http://www.fws.gov/le.*

Lacey Act

Under section 3372(a)(1) of the Lacey Act Amendments of 1981 (16 U.S.C. 3371–3378), it is unlawful to import, export, transport, sell, receive, acquire, or purchase any wildlife taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law. This prohibition applies, for example, in instances where these four native U.S. freshwater turtle species were unlawfully collected from Federal lands, such as those Federal lands within the range of these four native U.S. freshwater turtle species that are managed by the U.S. Forest Service, the National Park Service, the U.S. Fish and Wildlife Service, or another Federal agency.

It is unlawful under section 3372(a)(2)(A) of the Lacey Act to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law.

These four native U.S. freshwater turtle species are protected to varying degrees by State and Tribal laws within the United States, with significant differences in levels and types of protection which we summarized in our proposed rule (79 FR 64553) and clarified in some instances with this final rule (see the Summary of Comments and Our Responses section, below). Because many State laws and regulations regulate the take of these four native U.S. freshwater turtle species, certain acts (import, export, transport, sell, receive, acquire, purchase) with these four native U.S. freshwater turtle species taken unlawfully under State law could result in a violation of the Lacey Act Amendments of 1981 and thus provide for Federal enforcement action due to a violation of State law.

Summary of Comments and Our Responses

We requested comments on our October 30, 2014, proposed rule (79 FR 64553) for 60 days, ending December 29, 2014. We received a total of 26,343 comments during the comment period. Of these, 26,271 were form letters that voiced support for the proposed action, but did not provide significant supporting information for the proposed CITES Appendix-III listing of these four native U.S. freshwater turtle species.

For the 72 comments we received that were not form letters, 10 of the comments were from State agencies, 9 were from nongovernmental organizations, and 53 were from private individuals. These comments are summarized and responded to below.

Regarding the State agency comments, five State agencies generally supported listing all four of these native U.S. freshwater turtle species in Appendix III, and one State agency generally supported listing the common snapping turtle, smooth softshell turtle, and spiny softshell turtle species in Appendix III, while having no opinion of including the Florida softshell turtle. One State agency generally supported listing the common snapping turtle and spiny softshell turtle species in Appendix III, while having no opinion of including the smooth softshell turtle and the Florida softshell turtle. One State agency generally supported listing the common snapping turtle in Appendix III, but was opposed to including all three softshell turtle species in Appendix III. One State agency was opposed to listing all four of these native U.S. freshwater turtle species in Appendix III, and one State agency did not explicitly express support or opposition for the proposal, but rather concern about how the listing would create additional permitting requirements, expenses, potential loss of revenue, and export processing time.

Regarding the comments from nongovernmental organizations and private individuals, 44 generally supported the proposal to list all four of these native U.S. freshwater turtle species in Appendix III, and 18 generally opposed the proposal to list these four native U.S. freshwater turtle species in Appendix III.

We have considered all substantive information specifically related to the proposed rule that was provided to us during the open comment period. Several of the comments included opinions or information not directly related to the proposed rule, such as views expressing interest in increasing habitat for these species. We have not addressed those comments, as they do not have direct bearing on the Appendix-III listing of these turtles and their subspecies. We have summarized the relevant comments, grouped them into general issues, and provided our responses to these issues below. Public comments and comments from State agencies regarding these issues are grouped separately. Some commenters submitted additional reports and references for our consideration, which we reviewed and considered as appropriate.

Public Comments

Issue 1: Several commenters provided supporting data and information regarding the biology, range, distribution, life history, threats, and current conservation efforts affecting these four native U.S. freshwater turtle species.

Our Response: We thank all the commenters for their interest in the conservation of these four native U.S. freshwater turtle species and thank those commenters who provided information for our consideration in making this CITES Appendix-III listing determination. Some information submitted was duplicative of the information contained in the proposed rule; some comments contained information that provided additional clarity or support for information contained in the proposed rule.

Issue 2: Because these species are not endangered or threatened, the proposed rule is an unnecessary tax on turtle farmers. This proposed rule appears to be an attempt to regulate a legitimate business rather than to help a species in peril. Listing these animals should not adversely affect breeders using captive-bred turtles that have millions of dollars invested in their farms and earn a living producing these animals. Captive breeding of these species is sustainable and economically important. The cost of permits could be prohibitive to small businesses. Delays in permitting could have serious economic consequences. Increased Federal regulation will only increase government presence and be an undue tax burden.

Our Response: Our intent is to implement an Appendix-III permitting system for these species that will not be burdensome to U.S. turtle farmers or exporters, while ensuring that persons engaging in illegal trade are stopped. We will also use the listing to gather data on trade in these species, to better quantify the level of trade and the impact of trade on these species. These data will be made available to State wildlife management agencies, to improve management programs and further the conservation of these species.

Issue 3: The proposed listing is an example of over-regulation and has no purpose other than to determine if it is even necessary. The government has to justify it as a fact- finding regulation. The Service fails to address why the current Declaration of Wildlife Export Form (FWS Form 3–177) is insufficient to monitor international trade and whether exports are occurring legally with respect to State law. The proposed rule does not distinguish export of these species as captive-bred or wild-caught when this information is required by FWS Form 3–177. If monitoring these species is what the Service needs to improve, there are other ways available other than adding these species to protected lists. It is not clear what additional information the Service will gain by listing these species in Appendix III.

Our Response: Many importing and re-exporting countries do not have national legislation that requires inspection of all wildlife, particularly if the species in question is not listed under CITES. One reason for listing these species is to improve enforcement of Federal and State laws by enlisting the support of other CITES Parties. An Appendix-III listing will increase inspection and reporting of imports, exports, and re-exports of these four native U.S. freshwater turtle species by all CITES Parties, not just the United States. The listing will also improve the quantity of turtle export data. It will help us detect trade trends and, in consultation with the States, implement pro-active conservation or trade management measures that better control exports and detect illegal trade.

Issue 4: Protecting these species may be more successful if international trade was banned completely by listing them in Appendix I of CITES.

Our Response: The CITES Parties meet periodically to review what species in international trade should be regulated and to consider other aspects of the implementation of CITES. To include a species in or remove a species from Appendices I or II, a Party must propose an amendment to the Appendices for consideration at a meeting of the CoP. The adoption of such a proposal requires approval of at least two-thirds of the Parties present and voting. However, a Party may add a native species to Appendix III independently at any time, without the approval of the Parties, under Articles II and XVI of the Convention. Prior to a CoP, we solicit recommendations for amending Appendices I and II, as well as recommendations for resolutions, decisions, and agenda items for discussion at the CoP. We invite such recommendations via a notice published in the **Federal Register** that includes a public comment period. The appropriate time to request inclusion of the species in Appendix I or II is during that public comment period. Our regulations governing this public process are found at 50 CFR 23.87. CoP17 is scheduled to be held in Johannesburg, South Africa, from September 24, 2016, to October 5, 2016. In the interim, international trade data and other relevant information gathered as a result of a CITES Appendix-III listing will help us determine whether we should propose the species for inclusion in Appendix I or II, remove it from Appendix III, or retain it in Appendix III. If, after monitoring the trade of any U.S. CITES Appendix-III species and evaluating its status, we determine that the species meets the CITES criteria for listing in Appendix I or II, based on the criteria set forth at 50 CFR 23.89, we will consider whether to propose the species for inclusion in Appendix I or II.

Issue 5: We support adding these turtle species to CITES Appendix III. However, we encourage the Service to add these turtle species to CITES Appendix II.

Our Response: See our response to Issue 4.

Issue 6: There are large numbers of Americans who enjoy eating turtles; legitimate turtle farms should not be over-regulated.

Our Response: This listing will allow us to monitor and evaluate the export of these species from the United States. The goal is to insure that the trade is legal, which we hope will minimize adverse impacts on wild populations. These listings are intended to support implementation of existing laws and control illegal trade. These listings will assist State and tribal agencies by ensuring that only those specimens that were collected or produced legally are permitted for export.

Issue 7: CITES is not the proper avenue for taking action on these species at this time. The International Union for Conservation of Nature (IUCN) considered these species to be of "Least Concern."

Our Response: The criteria for listing species in CITES Appendix III are different from the criteria used by the IUCN in evaluating species for the Red List. The criteria for deciding to list U.S. species in Appendix III are provided at 50 CFR 23.90. As detailed above, we have applied these criteria in deciding to list these four species in Appendix III.

Issue 8: Population harvest control of the common snapping turtle should be regulated by the States. Each State is able to protect its interests by adopting appropriate regulations to protect these turtle species and ensure trade is legal and sustainable.

Our Response: The conservation and management of these species is primarily under the jurisdiction of State and tribal agencies. However, we will monitor and evaluate the international trade in these species, to decide if there is a conservation concern that would require any further action on our part. These listings will assist State and tribal agencies by ensuring that only those specimens that were collected or produced legally are permitted for export.

Issue 9: The proposal presents no scientific evidence that this action is warranted, but rather is using the CITES listing as a means to gather information. The science used to make a determination of the effects of exports on the wild population should be obtained by less draconian measures. Adding these turtles and their subspecies to CITES Appendix III would only hurt the already struggling turtle farmers. A study to collect and assess the current status and practices should be conducted before this action is taken.

Our Response: We refer the commenter to the discussion under Listing a Native U.S. Species in Appendix III, above which includes new information on exportation of these species for 2012–2014. We have carefully considered the threats facing these species (described in our October 30, 2014, proposed rule) and the criteria for listing a species in Appendix III, and determined that the listing is appropriate. As required by the Convention, we will monitor trade in these species. We will periodically consult with the States and review the effectiveness of the listing, documented levels of illegal trade, and the volume of legal trade in the species, particularly trade in those specimens harvested from the wild. After these consultations, we will determine if further action is needed.

Issue 10: Understanding the domestic origin of freshwater turtle shipments or the domestic origin of the turtles themselves is essential to understanding the commercial trade of freshwater turtles in the United States. The current gap in information is of concern.

Our Response: We agree. These listings will help close that information gap and inform management decisions by State and tribal agencies and the Service.

Issue 11: Captive breeding turtle farm operations for human consumption and the pet trade reduce pressure from harvest of wild populations.

Our Response: It is unknown at this time if captive turtle breeding operations reduce harvest pressure on wild populations of these species. Turtles are produced in the United States by farms that specialize in propagating captive-bred hatchlings to meet demand for commercial trade, but turtles are also entering trade through collection from the wild. Listing these species in CITES Appendix III is necessary to allow us to adequately monitor international trade in these taxa; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve these species.

Issue 12: The number of snapping turtles reportedly collected under Pennsylvania's commercial permit has more than doubled during the past decade. Although declines in Pennsylvania's snapping turtle populations are not apparent at the present time, there is concern that continuation of this trend is not sustainable.

Our Response: Although snapping turtle populations are known to be vigorous throughout much of the species' range, long-term persistent take makes the species vulnerable to decline.

Issue 13: The improved reporting of traded animals resulting from an Appendix-III listing would be highly valuable in understanding the trade trends and the likely impacts of trade on wild populations.

Our Response: We agree.

Issue 14: The vast majority of published peer-reviewed research papers on these species concern basic biology, ecology, and toxicology in the case of *Chelydra;* the number of papers examining the effects of offtake are minimal.

Our Response: We agree. An Appendix-III listing will lend additional support to State wildlife agencies in their efforts to regulate and manage these species, improve data gathering to increase our knowledge of trade in these species, and strengthen State and Federal wildlife enforcement activities to prevent poaching and illegal trade.

Issue 15: With regard to the taxonomy used in your **Federal Register** publication, it is worth noting that it corresponds to the CITES Standard reference for turtles (Fritz & Havas 2007; Vertebrate Zoology 57(2):149–368) in recognizing the subspecies *osceola* as valid. However, following a thorough molecular phylogenetic evaluation by Shaffer *et al.* (2008, in the Biology of the Snapping Turtle volume cited above), this subspecies is no longer recognized as taxonomically valid by the Committee on Standard English and Scientific Names of the American Society of Ichthyologists and Herpetologists, the Canadian Association of Herpetologists, the Canadian Amphibian and Reptile Conservation Network, Partners in Amphibian and Reptile Conservation, the Society for the Study of Amphibians and Reptiles and the Herpetologists' League (Crother 2012; ISBN 978–0–916984–85–4) or the Turtle Taxonomy Working Group (TTWG 2014: *http://www.iucn-tftsg.org/checklist/*). Should these species indeed be included in Appendix III, then this would be a matter to bring to the attention of the Nomenclature Specialist—Zoology of the CITES Animals Committee.

Our Response: We appreciate this comment and will bring this to the attention of the Nomenclature Specialist. Irrespective of the taxonomic differentiation of the common snapping turtle, all recognized common snapping turtle subspecies will be included in the CITES Appendix-III listing.

Issue 16: We surveyed the 36 range States for the common snapping turtle, 30 range States for the spiny softshell turtle, 23 range States for the smooth softshell turtle, and 4 range States for the Florida softshell turtle to determine the regulations currently in place to conserve the species. We have found that each of the States has instituted protections, if not outright harvest prohibitions. In particular, 14 of 36 range States representing approximately 35 percent of the common snapping turtle's natural range prohibit commercial harvest, with 19 of the remaining 22 range States allowing licensed, commercial harvest and 9 of the 22 requiring a minimum size of at least 11 inches, which provides for natural reproduction. Relative to the spiny softshell turtle, 18 of 30 range States, representing approximately 50 percent of its natural range, prohibit commercial harvest, with 11 of the remaining 12 States requiring a harvest license and 6 of the 12 States either requiring a minimum size or a harvest season that avoids affecting natural reproduction. Concerning the smooth softshell turtle, 14 of 23 range States, representing approximately 40 percent of its natural range, prohibit commercial harvest, with 8 of the remaining 9 range States requiring a harvest license and 4 of the 9 States requiring a minimum size or harvest season that avoids affecting reproduction. The Florida softshell occurs in four States and, of those four

States, two States (Florida and South Carolina) that represent 90 percent of its natural range prohibit harvest, and the other two require a commercial license, with one State requiring a minimum size to avoid effecting reproduction.

Our Response: We note that one of the criteria for listing a species in CITES Appendix III is that there are domestic regulations in place to prevent or restrict exploitation and to control trade (see discussion under Listing a Native U.S. Species in Appendix III, above). Existing laws have not been completely successful in preventing the unauthorized collection and trade of these four native U.S. freshwater turtle species. Listing these species, including their subspecies (except the Cuatro Cienegas spiny softshell turtle, which is already listed in Appendix I), in Appendix III is necessary to allow us to adequately monitor international trade in these taxa; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve these species and subspecies.

Issue 17: Recently acquired export data for 2012 and 2013 for just the wild-caught cohorts of these four native U.S. freshwater turtle species indicate that 295,373 common snapping turtles, 63,986 Florida soft-shelled turtles, 230 smooth soft-shelled turtles, and 25,495 spiny soft-shelled turtles were exported over that 2-year period. Reviewing all of the data, we would also strongly support adding to the CITES Appendix-III listing razor-backed musk turtles (*Sternotherus carinatus*), of which 72,526 wild-caught turtles were exported, and common musk turtles (*Sternotherus odoratus*), of which 100,361 wild-caught turtles were exported during that same 2-year time period. *Sternotherus* species are particularly vulnerable to over-collection, as females produce a very small numbers of eggs each year.

Our Response: These two species were discussed at the Service's freshwater turtle workshop in St. Louis in September 2010. Although the Working Group at the meeting recommended no wild-caught commercial off-take of these two species, it did not recommend including these two species in CITES Appendix III. We evaluate the need for CITES species listings or proposals on a regular, ongoing basis, and we will continue to consider the appropriateness of an Appendix-III listing for these two species.

Issue 18: The trade in turtles, particularly for the markets in Asia, has decimated turtle populations worldwide. What was once known as the Asian turtle crisis has become a worldwide turtle crisis because of the lengths these markets will go to acquire turtles for food and medicinal purposes.

Our Response: We agree that there is a substantial large-scale international commercial trade in many turtle species. Turtles are produced in the United States by farms that specialize in propagating captive-bred hatchlings specifically to meet this demand for commercial trade, but turtles are also entering trade through collection from the wild. Listing these species in CITES Appendix III is necessary to allow us to adequately monitor international trade in these taxa; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve these species.

Issue 19: The aquaculture industry in China preferentially imports wild-caught adult turtles as breeders.

Our Response: We are aware that there is a demand for large, wild-caught turtles both for food and as breeding adults. Long-term persistent take of wild-caught turtles makes these species vulnerable to decline. We acknowledge that more study is needed to determine what levels of harvest of mature adults of these species are sustainable.

Issue 20: The Service does not provide any specific evidence or recent cases to support their assertions that State laws are not effectively regulating turtle harvest and that illegal trade and unauthorized collection (poaching) of these species is occurring in the United States.

Our Response: In our October 30, 2014, proposed rule (79 FR 64553), we stated that existing laws have not been completely successful in preventing the unauthorized collection and trade of these four native U.S. freshwater turtle species. Existing regulatory mechanisms detailed in the proposed rule in this regard, as well as comments we received on the proposed rule, support our initial determination. For example, the State of Virginia, Department of Game and Inland Fisheries, commented that "We have cross-referenced annual reports from harvesters with processors and have seen as much as 30,000 pounds unreported in a single season. This discrepancy between harvester reports and processor reports appears to be an issue in other [S]tates as well."

Issue 21: This proposed rule was initiated by economically powerful and litigious environmental groups with campaigns that seek to criminalize pet turtle ownership.

Our Response: The commenter did not provide any evidence of this assertion. In fact, the Service's International Wildlife Trade Program convened a freshwater turtle workshop in St. Louis, Missouri, in September 2010, to discuss the pressing management, regulatory, scientific, and enforcement needs associated with the harvest and trade of freshwater turtles in the United States (see Background, above). The Conservation, Status & Monitoring Working Group at the workshop recommended that listing these species in CITES Appendix III be considered. Based on the recommendations contained in Resolution Conf. 9.25 (Rev. CoP16) and the listing criteria provided in our regulations at 50 CFR 23.90, these four native U.S. freshwater turtle species, including all subspecies, qualify for listing in CITES Appendix III.

Issue 22: The proposed rule cites Congdon *et al.* that snapping turtles are late maturing. However, the Congdon *et al.* study took place in a cold climate State. In the warm southeastern United States, where most turtle farming occurs, turtles may reach maturity in as little as 2 to 3 years.

Our Response: We agree that under controlled conditions, turtles may reach maturity earlier than would normally occur in the wild. However, maturity rates of captive-bred turtles are not relevant to this listing action.

Issue 23: There is no information that the Service consulted Native American Tribes as required at 50 CFR 23.90.

Our Response: Pursuant to 50 CFR 23.90(e)(1), we are required to consult with and solicit comments from all States and Tribes where the species occurs and all other range countries. We met this requirement when we solicited comments during a 60-day comment period from all interested parties in our October 30, 2014, proposed rule (79 FR 64553) and by also directly reaching out to tribal entities to notify them of our proposed rule and to solicit comments from Tribes on our proposed rule. U.S. Fish and Wildlife Service Regional Native American Liaison's serve as the point of contact between the Service and Tribes. We worked collaboratively with U.S. Fish and Wildlife Service Regional Native American Liaison's to contact Tribes where these species occur within their respective regions for the purpose of informing them of our proposed rule and to solicit comments on the proposed rule. We did not receive any tribal comments to the proposed rule.

Issue 24: The Association of Fish and Wildlife Agencies does not represent individual recommendations from directors of State wildlife agencies. The proposed rule suggests that State wildlife agencies have approved the Appendix-III listing of these turtle species.

Our Response: We did not intend to imply or assume that State wildlife directors have approved the Appendix-III listing of these turtle species. In fact, we made clear in our October 30, 2014, proposed rule that we have consulted the States, through the Association of Fish and Wildlife Agencies, on this proposed action. Further, the Conservation, Status & Monitoring Working Group at the freshwater turtle workshop in St. Louis, Missouri, in September 2010, recommended that listing these species in CITES Appendix III be considered (see Background, above). Our 60-day comment period for the proposed rule allowed all interested parties an opportunity to comment on our proposal to list these four native U.S. freshwater turtle species in CITES Appendix III, and we received comments from 10 State agencies, as described below.

Issue 25: Restricting State possession of these species and enacting breeding laws are restrictive domestic measures that are contrary to Article XIV of CITES.

Our Response: The commenter is in error regarding the interpretation of Article XIV of the Convention and regarding the effect of this Appendix-III listing. An Appendix-III listing is not a stricter domestic measure, nor does it restrict State possession of these four native U.S. freshwater turtle species or enact breeding laws for these species. Article XIV of the Convention explicitly recognizes the rights of Parties to adopt stricter domestic measures to restrict or prohibit trade, taking, possession, or transport of any wildlife or plant species. Resolution Conf. 11.3 (Rev. CoP16) further recommends that Parties make use of stricter domestic measures if they have determined "that an Appendix-II or -III species is being traded . . . in a manner detrimental to the survival of that species" or is being "traded in contravention of the laws of any country involved in the transaction." When necessary, the United States has utilized stricter domestic measures, such as the ESA, Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), and Lacey Act Amendments of 1981 (16 U.S.C. 3371–3378), to implement CITES.

Issue 26: Concerns by citizens who possess and breed common snapping turtles and softshell turtles should be publicly addressed first in an amended proposed rule, before publishing any final rule adding these species to Appendix III of CITES.

Our Response: The rulemaking process is designed to allow for public input through the public comment period on the proposed rule, and agency response to those comments in the preamble to the final rule, as we have done here. We decline to accept this suggestion.

Comments From States

State of Arkansas, Arkansas Game and Fish Commission (AGFC)

Issue 27: AGFC supports this proposed action. The commercial harvest of aquatic turtles has been a component of wildlife resource use by Arkansans for many decades. Three of the four proposed species are commercially harvested in Arkansas: the common snapping turtle, spiny softshell, and smooth softshell. AGFC regulatory changes in 2006 initiated reporting requirements of all turtles harvested from the wild. A quick summary of these harvest data show that between 2004–2014 a total of 46,274 snapping turtles and 70,894 softshell turtles (both species of soft-shelled turtles combined) were harvested from Arkansas waters. It should be noted that these data are incomplete due to either incorrect (listed in pounds of turtle instead of number of individuals) or unreported harvests. Also, these numbers do not reflect whether the animals were exported or retained as captive brood stock. However, it is most likely that the majority of these turtles were exported from the State, destined for the Asian market. Current AGFC regulations impose no limits on the harvest of these species, in terms of season, size class, or numbers, within those areas designated as open to commercial aquatic turtle harvest, which covers approximately one half of the State.

The only foreseeable impact this CITES listing would have would be on those Arkansas harvesters and dealers that wished to ship turtles directly overseas to foreign buyers. The vast majority of Arkansas turtle sales (including the species in question here) are made to buyers and brokers in California who then ship the turtles overseas, and the onus falls on the broker to obtain all required export permits and fulfill any reporting requirements. The proposed CITES Appendix-III listing of these three commercial aquatic turtle species would appear to have no adverse impacts or place any undue regulatory burden on the current commercial aquatic turtle harvester and dealer community in Arkansas. Therefore, the AGFC supports the proposed CITES Appendix-III listing of these species as it would allow better tracking of international exports of these commercially viable turtle species.

Our Response: We thank the State of Arkansas for its comments.

State of Colorado, Colorado Parks and Wildlife (CPW)

Issue 28: CPW staff members have reviewed the proposal and generally support the inclusion of the common snapping turtle and spiny softshell turtle in Appendix III of CITES. CPW has no comment on the other two species proposed for inclusion as they are not found in Colorado. Both of these native species (common snapping turtle and spiny softshell turtle) are regulated in Colorado, and we agree that their inclusion in CITES Appendix III will increase our ability to monitor their take from the State and allow for better enforcement of their international trade. One specific point we would like to clarify from the **Federal Register** publication is the State regulations as they apply to the spiny softshell. The **Federal Register** publication states that collection for personal use is permitted in Colorado. It should be noted that Colorado does not allow possession or collection of the spiny softshell turtle, except by special permit/license.

Our Response: We thank the State of Colorado for its comments and for correcting the record regarding the regulation for possession and collection of spiny softshell turtles in Colorado.

State of Florida, Florida Department of Agriculture and Consumer Services (FDACS)

Issue 29: FDACS is the lead agency for the State of Florida for aquaculture. The department is charged by State law with enhancing the growth of aquaculture while protecting Florida's environment.

Currently, the department has 56 certified aquaculture facilities that are growing and marketing freshwater turtles, the majority of which include one or several of the species proposed for CITES Appendix-III listing. Turtles are marketed domestically and internationally to the pet trade and for food consumption. Florida aquaculture turtle producers reported sales in 2012 of approximately $1.2 million based upon a survey conducted for the FDACS by the Florida Agricultural Statistics Service. Aquaculture farms certified by FDACS are subject to on-farm inspections for compliance with chapter 597, Florida Aquaculture Policy Act, Florida Statutes and with chapter 5L–3, Aquaculture Best Management Practices, Florida Administrative Code.

Each farm must include their unique identification number on all business-related paper trails (receipts, bills of lading, bills of sale), and we encourage including this identification number on packaging. FDACS conducts unannounced farm inspections for compliance with State laws, which includes regulations relative to the possession, transportation, and sale of native species.

Since 2009, Florida law has prohibited all commercial harvest and trade of native freshwater turtles and eggs from the wild. Existing farms were able to obtain brood stock under a special permit from Florida Fish and Wildlife Conservation Commission; however, the permit is no longer available. Farms must be self-sustaining or obtain stock from other licensed farms or from other States that allow legal commercial harvest and sale of these species. Documentation of stock sources must be maintained by Florida turtle aquaculturists. Wild populations are further protected by these regulations required of all certified Florida turtle farms. Addition of the proposed turtle species in CITES Appendix III will create additional permitting requirements for certified turtle farms exporting products. A Service Import/Export License and filing of the declaration form (FWS Form 3–177) are required for aquaculture turtle shipments along with associated inspection fees. If these species are added to CITES Appendix III, a CITES export permit and potentially a Designated Port Exception Permit will be required for aquaculture shipments. A majority of the Florida turtle farms export hatchlings or market size adults, so a quick turnaround on export applications is critical. Additional permitting requirements increase export time and expenses for farms and potentially result in a loss of revenue if permits cannot be obtained in a timely manner.

Our Response: We will continue to work with State and tribal agencies and the regulated industry to ensure that our permitting process is as streamlined and efficient as possible, while still meeting our legal obligations.

State of Iowa, Iowa Department of Natural Resources (IDNR)

Issue 30: The State of Iowa's regulations on the commercial harvest of wild turtles are among the least restrictive in the United States. This harvest is limited to the common snapping turtle, smooth softshell turtle, spiny softshell turtle, and painted turtle. Twenty-six years of recorded harvest statistics show the annual total harvest of common snapping turtles and both species of softshell turtles has steadily increased from 1987 to 2012. A steady increase in the number of licensed turtle harvesters has been associated with this increase. Much of these increases have been attributed to the demand for turtles in Asia. Lack of stringent reporting requirements prevents IDNR from knowing where many harvested turtles are marketed. However, it is believed many of the adults are exported to other States for use in turtle aquaculture facilities. Statistical harvest data, turtle life-history information, and available research lead the IDNR to believe harvest is exceeding the capability for wild turtles to sustain their populations.

An IDNR committee charged with determining the status of wild turtle populations found that the commercial harvest of common snapping turtles, smooth softshell turtles, and spiny softshell turtles is threatening these species due to overharvest and that it is inevitable that these populations will be on a decline if more restrictive harvest regulations are not enacted. However, it should be mentioned that loss of habitat quality and quantity, predation, and water quality are other probable factors influencing turtle populations.

IDNR tentatively supports the Service's efforts to include the four native U.S. freshwater turtle species in Appendix III of CITES. However, there is concern for the IDNR's role in meeting CITES Appendix-III requirements. Undoubtedly more staff time will be needed to administer, coordinate, and enforce Federal CITES regulations. Iowa may also need to promulgate rules for regulatory purposes. Before full support can be given, the Service must clearly communicate with all States the processes involved in issuing CITES tags, and those processes must not be overly burdensome to the States.

Our Response: A CITES Appendix-III listing only applies to import, export, and re-export of specimens covered by the listing. In June 2006, the United States listed the alligator snapping turtle (*Macroclemys temminckii*) and all species of map turtle (*Graptemys* spp.) in Appendix III of CITES. There are no U.S. CITES tagging requirements for any turtle species, and we do not foresee any regulatory or administrative burdens that will fall to the States. Export permits will be the responsibility of the exporter.

State of Louisiana, Louisiana Department of Agriculture and Forestry (LDAF)

Issue 31: LDAF is opposed to this proposed rule for the following reasons:

- Additional expenses will be incurred by turtle farmers for more CITES permits and inspections. All shipments containing a CITES species must be inspected at the airport prior to shipment. The Service charges an inspection fee, as does the shipping agent responsible for correctly packing and handling the shipment.
- Legitimate farmers are being punished due to the actions of illegal traders that may be collecting turtles from the wild, while Louisiana turtles are captive-raised.
- The Service has no way to determine if exported turtles are wild-caught or captive-raised from export documents because they have no source code for captive-raised turtles. On the export form (FWS Form 3–177), all turtles are required to be listed as "LIV" and "W" for live, wild-caught, and this is not a true reflection of Louisiana exports, which are farm-raised.
- The Service cites export statistics when demand was high but due to the cyclical nature of the turtle market, demand for softshells has dramatically fallen in the last few years and demand for snappers is slowing down, especially in the Asian market.

Therefore, we oppose the listing of these four species of turtles under CITES Appendix III. However, if they are to be listed, we ask that they be added to the Master File that is approved by the Service every year.

Our Response: The trade information presented in our October 30, 2014, proposed rule (79 FR 64553) was the best available data at the time. We have updated that information above (see Listing a Native U.S. Species in Appendix III) which shows that exportation of live snapping turtles from the United States increased by 69.7% during 2012–2014 as compared to 2009–2011. Also during 2012–2014 as compared to 2009–2011, live softshell turtles exported from the United States increased by 5.7%.

Personal collection and commercial harvest of these species is permitted in Louisiana. In our proposed rule, we acknowledge that export levels vary from year to year. We also believe that the potential remains for significant exports in the future based on overseas demand. It is not the case, as a matter of law, that all CITES shipments must be inspected. The requirement to declare these species at the time of export and make them available for inspection already applies. Subsequent to this listing, we expect that we will be working with interested parties to explore the feasibility of a Master File system for these species as well as an assessment of how our reporting forms can accurately discriminate between wild-caught and farm-raised turtles.

State of Louisiana, Louisiana Department of Wildlife and Fisheries (LDWF)

Issue 32: Exports of the common snapping turtle have increased steadily during the past 10 years, from about 130,000 turtles in 2003, to 3,157,000 turtles in 2013. In 2013, Louisiana turtle farmers exported less than 2 percent of the national total. We have been able to determine that the majority of exported snapping turtles are farmed hatchlings that originate from sources and operations in the Midwest. At this time, we do not oppose a CITES Appendix-III listing for the common snapping turtle.

Of the three softshell turtle species proposed for listing in CITES Appendix III, the smooth softshell rarely enters into commerce, and exports have declined from about 10,000 in 2003, to about 75 per year in the past 3 years. The spiny softshell has shown no substantial increase: average of 36,000 per year (2003–2006) to an average of 62,000 per year (2010–2013). Hatchlings that were raised on Louisiana turtle farms accounted for 15 percent of spiny softshell exports in 2013. The IUCN considers the conservation status of the smooth and spiny softshells as "Least Concern." Based on this status, the relatively low export numbers, a relatively inactive market, and the fact that many to most of the exported turtles are farm-raised hatchlings, we see no justification for the action, and therefore recommend against a CITES Appendix-III listing for the smooth and spiny softshells.

The Florida softshell has shown an increase in exports during the past 10 years, from an average of about 44,000 per year (2003–2006) to an average of about 428,000 per year (2010–2013). The proposed rule makes outdated claims relative to this species (*e.g.,* "It is the most intensively harvested freshwater turtle in Florida" and "The level of wild harvest necessary to maintain farm production is unknown"). Florida banned all commercial take of freshwater turtles in 2009, and limited personal take to one turtle per day. Licensed turtle farms were given until 2011 to collect turtles for breeding stock. Thus, there is no longer a threat of harvest of Florida softshell in Florida, as wild harvest has been illegal for 3 years, and remains so. The other three range States for the Florida softshell have very limited population sizes (Alabama), or regulate the number that may be removed for commerce (Georgia and South Carolina). One Florida turtle farm accounted for about one-third of all Florida softshell hatchlings that were exported in 2013. Because commerce and exports of Florida softshell are almost completely limited to farm-raised hatchlings, and because its status is also considered "Least Concern" by IUCN, we see no justification for the action and therefore recommend against a CITES Appendix-III listing for the Florida softshell.

Our Response: We thank the LDWF for its comments. The criteria for listing species in CITES Appendix III are different from the criteria used by the IUCN in evaluating the conservation status of a species. The criteria for deciding to list U.S. species in Appendix III are outlined at 50 CFR 23.90. As detailed above (see Listing a Native U.S. Species in Appendix III), we have complied with these criteria in deciding to list these four species in CITES Appendix III.

State of Minnesota, Minnesota Department of Natural Resources (MDNR)

Issue 33: MDNR has reviewed the proposed rule and supports the Service's proposal. The common snapping turtle occurs throughout most of Minnesota, and commercial harvest of this species has been widely practiced for many years. Because monitoring and regulation of this harvest was believed to be inadequate, the common snapping turtle was designated a Species of Special Concern under Minnesota's Endangered Species Act (Minnesota Statutes, Chapter 84.08 95) in 1984. While no formal population monitoring data were available, abundant anecdotal accounts of declining populations supported this concern. In response to the considerable scientific evidence that the commercial harvest of wild turtle populations is not sustainable in northern latitudes, in 2004, the MDNR undertook a major revision of the State's statutes and rules governing turtle harvest. Among many changes was a phase-out of commercial harvest by placing a moratorium on the sale of new harvest licenses and implementing several improvements in reporting and recordkeeping. While a complete elimination of commercial harvest is still many years off, regulation and monitoring of harvest has been improved, and in 2013, the MDNR removed the common snapping turtle's designation under the Minnesota's Endangered Species Act. Although the enclosed report indicates that the number of commercial licenses issued has declined since 2002, the harvest of common snapping turtles remains substantial, and shows little evidence of a decline in the near term. Consequently, the MDNR supports the Service's proposal to list the common snapping turtle in CITES Appendix III.

The smooth softshell turtle is restricted to the lower reaches of the St. Croix, Minnesota, and Mississippi Rivers in Minnesota. Due to its vulnerability to channelization, siltation, water pollution, and disturbance of nesting sites by humans and predators, the smooth softshell turtle was designated a Species of Special Concern under Minnesota's Endangered Species Act in 1984, and retains that designation to this date. Research into the habitat use of this species is ongoing within the MDNR. Harvest of the smooth softshell turtle is not permitted in Minnesota. Given the species vulnerable status within the State, MDNR supports the Service's proposal to list the smooth softshell turtle in CITES Appendix III.

The spiny softshell turtle is found throughout the central and southern portions of Minnesota, and commercial harvest is permitted. Because harvest pressure on this species has historically not been as great as the pressure placed upon the common snapping turtle, this species has not received the concern given to the common snapping turtle. The enclosed report provides evidence that the harvest of this species is small and continuing to decline. While improvements in commercial harvest regulations have benefitted this species, concerns that commercial turtle harvest at any scale from wild populations is not sustainable in Minnesota leads the MDNR to support the Service's proposal to include the spiny softshell turtle in Appendix III of CITES.

An additional change made to Minnesota's laws in 2004 created the regulatory framework for turtle farming in the State. While there has been relatively little activity in this area to date, there is evidence that turtle farming will become an increasingly popular activity in Minnesota in the future, and listing of these three turtles in CITES Appendix III would aid the MDNR in monitoring that activity and its relationship to harvest from the wild.

Our Response: We thank the MDNR for its comments, including additional clarity on the status of these species in Minnesota.

State of North Carolina, North Carolina Wildlife Resources Commission (NCWRC)

Issue 34: NCWRC supports the proposal to include the common snapping turtle, Florida softshell turtle, smooth softshell turtle, and spiny softshell turtle in CITES Appendix III so that they are monitored in international trade. Although only two of the species (common snapping turtle and spiny softshell turtle) occur in North Carolina, the listing of all four North American turtles is warranted to prevent any common snapping turtle or U.S. softshell turtle from being illegally exported in international trade. As these turtles are not being monitored in international trade at this time, it is important to begin monitoring these turtles to determine the exportation rate to overseas markets and how these markets may expand in the future. This export monitoring could have an impact on how these turtles are managed within their current native ranges to ensure stable populations.

Current North Carolina wildlife regulations allow the common snapping turtle to be collected for personal consumption and trade, while the spiny softshell turtle may not be commercially collected. North Carolina regulations currently allow 10 snapping turtles to be collected per day, and 100 per year, by each collector. These limits were put in place due to high harvest numbers (thousands for some individual collectors) occurring for snapping turtles and other species prior to 2003. At the State level, we increased monitoring efforts and took regulatory action over a decade ago, and efforts should be increased at the Federal level to do the same. International trade in these species to meet the growing demand from other regions of the world could result in population declines within North Carolina and other States.

The apparent increase in exports of the common snapping turtle (as shown in the 2009–2011 data in the October 30, 2014, proposed rule at 79 FR 64557), coupled with declining turtle populations in Asia (see van Dijk, P.P., B.L. Stuart, and A.G.J. Rhodin, Editors. 2000. Asian Turtle Trade: Proceedings of a Workshop on Conservation and Trade of Freshwater Turtles and Tortoises in Asia, Chelonian Research Monographs, Number 2: pp. 1–164), could lead to increasing numbers of common snapping turtles and softshell turtles impacted in the United States. The findings of Congdon, Dunham, and Sels (1994. Demographics of Common Snapping Turtle, (*Chelydra serpentina*): Implications for Conservation and Management of Long-lived Organisms. American Zoologists, Volume 34: pp. 397–408) on snapping turtle survivorship and possible impacts from commercial harvesting suggest that long-lived vertebrates have more difficulty recovering from commercial harvest, and that because of long generation times, detection of population recovery may be delayed.

Export monitoring of common snapping turtles and the three softshell turtles that are the subjects of the proposed rule is warranted to determine if their trade increases over time. At present, declines are not apparent in populations of these turtle species, but as fewer turtles are available from other countries, North American turtle populations are at risk from unregulated export.

Our Response: We thank the NCWRC for its comments, including current North Carolina regulatory information regarding the common snapping turtle and spiny softshell turtle.

State of Texas, Texas Parks & Wildlife Department (TPWD)

Issue 35: TPWD currently permits commercial collection (from private water bodies) of three of the four freshwater turtle species listed in the Service's proposal to amend CITES Appendix III. Those species are the smooth softshell turtle, spiny softshell turtle, and common snapping turtle. The Florida softshell turtle does not occur in Texas. Collection of any freshwater turtle species from public water bodies is not allowed in Texas. Export to international markets has historically been the primary driver of freshwater turtle commercial collection in Texas. Assessing the impact of this practice has been challenging. Detection of illegal collection and trade by State law enforcement officials is difficult. Therefore, TPWD supports including the above-mentioned turtles in Appendix III of CITES. TPWD believes this inclusion will provide valuable data regarding freshwater turtle trade and will better inform management efforts and harvest guidelines.

Our Response: We thank the TPWD for its comments, including current regulatory information regarding the collection of freshwater turtles in Texas.

State of Virginia, Virginia Department of Game and Inland Fisheries (DGIF)

Issue 36: DGIF supports the proposed action to include the snapping turtle, Florida softshell, smooth softshell, and spiny softshell in CITES Appendix III so that they can be monitored in international trade. Of the four species that are the subjects of the proposed rule, the snapping turtle and spiny softshell both occur in Virginia, and only the snapping turtle is permitted for commercial harvest. During 2002–2013, the harvest of snapping turtles in Virginia increased 12-fold (1,200 percent), with 2013 reports documenting the highest single-year harvest (7,926 individual turtles). These harvest numbers should be considered conservative estimates, given the inaccuracies often found in harvest reports. We have cross-referenced annual reports from harvesters with processors and have seen as much as 30,000 pounds unreported in a single season. This discrepancy between harvester reports and processor reports appears to be an issue in other States as well. Although it is one of the fastest growing commercial harvests in many States, the commercial harvest of snapping turtles is also one of the poorest managed and monitored commercial harvests.

Our Response: We thank the DGIF for its comments, including important information regarding the commercial harvest of the common snapping turtle.

Issue 37: According to Crother (2012), the common name for "snapping turtle" does not include the word "common." According to Crother (2012), the common names for "Florida softshell" and "spiny softshell" do not include "turtle."

Our Response: Although we use common names where appropriate, they cannot be relied upon for identification of any specimen, as they may vary greatly in local usage. Our use of a common name is based on current wider usage. In addition, the Integrated Taxonomic Information System (ITIS), a database representing a partnership of U.S., Canadian, and Mexican agencies, other organizations, and taxonomic specialists designed to provide scientifically credible taxonomic information, includes the common names "common snapping turtle," "Florida softshell turtle," and "spiny softshell turtle"; therefore, we accept the use of these common names where appropriate. Because of the potential for confusion with common names, specimens must be identified on CITES permits using the scientific (Latin) name.

Issue 38: We recommend not including or highlighting harvest reports from those States where the snapping turtle is considered invasive. These few States are irrelevant to the overall conservation of the species.

Our Response: A CITES Appendix-III listing of the common snapping turtle applies to specimens destined for export that are derived from throughout the United States. On February 3, 1999, Executive Order 13112 was signed, which directed Federal agencies to address invasive species issues to not authorize, fund, or carry out actions likely to cause or promote the introduction or spread of invasive species, and also established the

National Invasive Species Council. Executive Order 13112 requires monitoring invasive species populations accurately and reliably. Requiring harvest reports from those States where the snapping turtle is considered invasive could preclude additional introductions and potential 'laundering' of illegal specimens and will contribute to compliance with Executive Order 13112.

Issue 39: The Service's export database (LEMIS) only reports what is exported, not those animals processed for domestic sale. Considering the typical sex ratio of snapping turtles is about 1:1 and mostly females are being exported, the summary in the proposed rule may grossly underestimate the actual harvest amounts. This situation is exacerbated by inaccurate commercial harvest reporting and by unreported recreational harvest. Therefore, the actual number of snapping turtles being harvested could be potentially twice the numbers summarized by the Service. In the proposed rule's summary of total harvest figures, "farm-raised" turtles include the offspring of wild-caught, gravid snapping turtles. We contend that those animals are being taken from the wild and should be reported as such.

Our Response: We acknowledge the need to improve reporting of harvest levels of these species. A CITES Appendix-III listing of these species will assist us in this effort.

Issue 40: The snapping turtle harvest size limits are often focused on larger individuals, which is contrary to the life history of a long-lived species with low nest and hatchling survivorship and high adult survivorship. In such reproductive strategies, we want to protect the larger reproductive adults, but we have found that harvesters do not want smaller turtles.

Our Response: Long-term persistent take of wild-caught turtles makes these species vulnerable to decline. We acknowledge that more study is needed to determine what levels of harvest of mature adults of these species are sustainable.

Decision To List Four Native U.S. Freshwater Turtle Species

Based on the recommendations contained in Resolution Conf. 9.25 (Rev. CoP16) and the listing criteria provided in our regulations at 50 CFR 23.90, these four native U.S. freshwater turtle species, including all subspecies, qualify for listing in CITES Appendix III. Declines have been documented or locally severe declines may be possible in at least some portions of the range of these four native U.S. freshwater turtle species, although the Florida softshell seems to be resistant to high levels of commercial harvest. Take of Florida softshells in Florida is regulated, and it is a species of special concern in South Carolina. Although snapping turtle populations are known to be vigorous throughout much of the species' range, long-term persistent take makes the species vulnerable to decline. Existing laws have not been completely successful in preventing the unauthorized collection and trade of these four native U.S. freshwater turtle species. Listing these four native U.S. freshwater turtle species, including their subspecies, except the Cuatro Cienegas spiny softshell turtle (*A. s. atra [=Apalone atra],* Webb and Legler 1960), which is already listed in CITES Appendix I, in CITES Appendix III is necessary to allow us to adequately monitor international trade in these taxa; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve these species and subspecies. An Appendix-III listing will lend additional support to State wildlife agencies in their efforts to regulate and manage these species, improve data gathering to increase our knowledge of trade in these species, and strengthen State and Federal wildlife enforcement activities to prevent poaching and illegal trade. Furthermore, listing these species in Appendix III will enlist the assistance of other countries in our efforts to monitor and control trade in these species and subspecies.

Accordingly, we are listing the common snapping turtle (*Chelydra serpentina*), Florida softshell turtle (*Apalone ferox*), smooth softshell turtle (*Apalone mutica*), and spiny softshell turtle (*Apalone spinifera*) in Appendix III of CITES. The listing includes live and dead whole specimens, and all readily recognizable parts, products, and derivatives, of these species and their subspecies, except *Apalone spinifera atra,* which is already included in Appendix I of CITES. The term "readily recognizable" is defined in our regulations at 50 CFR 23.5 and means any specimen that appears from a visual, physical, scientific, or forensic examination or test; an accompanying document, packaging, mark, or label; or any other circumstances to be a part, product, or derivative of any CITES wildlife or plant, unless such part, product, or derivative is specifically exempt from the provisions of CITES or 50 CFR part 23.

Our regulations at 50 CFR 23.90 require us to publish a proposed rule and a final rule for a CITES Appendix-III listing even though, if a proposed rule is adopted, the final rule will not result in any changes to the Code of Federal Regulations. Instead, this final rule will result in DMA notifying the CITES Secretariat to amend Appendix III by including these four native U.S. freshwater turtle species (including their subspecies, except *Apalone spinifera atra,* which is already included in Appendix I of CITES), in Appendix III of CITES for the United States.

Subsequent to today's publication in the **Federal Register** of this final rule to list these species and their subspecies in CITES Appendix III, we will notify the CITES Secretariat. An Appendix-III listing becomes effective 90 days after the Secretariat notifies the CITES Parties of the listing. The effective date of this rule (see **DATES**, above) has been extended to give the CITES Secretariat sufficient time to notify all Parties of the listing.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that the regulatory system must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and Small Business Regulatory Enforcement Fairness Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Department of the Interior certifies that this action will not have a significant effect on a substantial number of small entities for the reasons discussed below.

This final rule establishes the means to monitor the international trade in species native to the United States and does not impose any new or changed restriction on the trade of legally acquired specimens. Based on current exports of these four native U.S. freshwater turtle species, we estimate that the costs to implement this rule will be less than $100,000 annually due to the costs associated with obtaining permits.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include aquaculture businesses with less than $750,000.00 in annual sales. This final rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service has determined that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and there is no cost imposed on any State or local entities or tribal governments. This rule will not have a significant or unique effect on State, local, or tribal governments or the private sector because the Service, as the lead agency for CITES implementation in the United States, is responsible for the issuance of permits and the authorization of shipments of live wildlife, and wildlife parts and products, for CITES-listed species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Information that we will collect under this final rule on FWS Form 3–200–27 is covered by an existing OMB approval and has been assigned OMB control number 1018–0093, which expires on May 31, 2017. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

This final rule has been analyzed under the criteria of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the Department of the Interior procedures for compliance with NEPA (Departmental Manual (DM) and 43 CFR part 46), and Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508). This final rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement or evaluation is not required. This final rule is a regulation that is of an administrative, legal, technical, or procedural nature, and its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA. The FWS has determined that this final rule is categorically excluded from further NEPA review as provided by 516 DM 2, Appendix 1.9, of the Department of the Interior National Environmental Policy Act Revised Implementing Procedures and 43 CFR 46.210(i). No further documentation will be made.

Takings (Executive Order 12630)

In accordance with Executive Order (E.O.) 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have determined that this final rule will not have significant takings implications. While export, which was previously unregulated, will now be regulated, export will still be allowed.

Federalism (Executive Order 13132)

In accordance with E.O. 13132 (Federalism), this final rule will not have significant Federalism effects. A federalism summary impact statement is not required because this final rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although this final rule will generate information that will be beneficial to State wildlife agencies, we do not anticipate that any State monitoring or control programs will need to be developed to fulfill the purpose of this final rule. We have consulted the States, through the Association of Fish and Wildlife Agencies, on this action. In addition, 10 of the comments we received to our proposed rule (October 30, 2014; 79 FR 64553) were from State agencies, and our final decision reflects consideration of the information and opinions we have received from those State agencies. This final rule will help us more effectively conserve these species and will help those affected by CITES to understand how to conduct lawful international trade in wildlife and wildlife products.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations With Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we have a responsibility to communicate meaningfully with Federally recognized Indian Tribes on a government-to-government basis. U.S. Fish and Wildlife Service Regional Native American Liaison's serve as the point of contact between the Service and Tribes. We worked collaboratively with U.S. Fish and Wildlife Service Regional Native American Liaison's to contact Tribes where these species occur within their respective regions for the purpose of informing them of our proposed rule and to solicit comments on the proposed rule. In accordance with Secretarial Order 3206 of June 5, 1997

(American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We determined that this final rule will not interfere with the Tribes' ability to manage themselves or their funds or to regulate these turtle species on tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking actions that significantly affect energy supply, distribution, or use. This final rule will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this final rule is available upon request from the Division of Management Authority, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this final rule is Clifton A. Horton, Division of Management Authority, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Amendment to CITES Appendix III

Our regulations at 50 CFR 23.90 require us to publish a proposed rule and, if appropriate, a final rule for a CITES Appendix-III listing, even though the final rule will not result in any changes to the Code of Federal Regulations. Accordingly, for the reasons provided in this final rule, we will ask the CITES Secretariat to amend Appendix III of CITES to include for the United States these four native U.S. freshwater turtle species: the common snapping turtle (*Chelydra serpentina*), Florida softshell turtle (*Apalone ferox*), smooth softshell turtle (*Apalone mutica*), and spiny softshell turtle (*Apalone spinifera*). This listing includes live and dead whole specimens, and all readily recognizable parts, products, and derivatives of these species and their subspecies, except *Apalone spinifera atra*, which is already included in Appendix I of CITES.

As a result of this action, exporters must obtain an export permit issued by the Service's Division of Management Authority; pack and ship live specimens according to the IATA Live Animals Regulations or the *CITES Guidelines for the non-air transport of live wild animals and plants;* and follow all applicable regulations pertaining to the export of wildlife, including declaration of the shipment to the Service prior to export.

Dated: April 1, 2016.

Stephen Guertin,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2016–11201 Filed 5–23–16; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 81, No. 100
Tuesday, May 24, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–5856; Airspace Docket No. 16–AGL–9]

Proposed Establishment of Class E Airspace; Park River, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Park River Airport—WC Skjerven Field, Park River, ND. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures developed at Park River Airport—WC Skjerven Field, for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 8, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2016–5856; Airspace Docket No. 16–AGL–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace at Park River Airport—WC Skjerven Field, Park River, ND.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–5856/Airspace Docket No. 16–AGL–9." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 7-mile radius of Park River Airport—WC Skjerven Field, Park River, ND, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL ND E5 Park River, ND [New]

Park River Airport—WC Skjerven Field
(Lat. 48°23′39″ N., long. 097°46′51″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Park River Airport—WC Skjerven Field.

Issued in Fort Worth, Texas, on May 10, 2016.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–11957 Filed 5–23–16; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 701 and 702

RIN 3084–AB24 and AB25

Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions; Rule Governing Pre-Sale Availability of Written Warranty Terms

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (FTC or Commission) proposes to amend the rules on Disclosure of Written Consumer Product Warranty Terms and Conditions (Disclosure Rule) and Pre-Sale Availability of Written Warranty Terms (Pre-Sale Availability Rule) to give effect to the E-Warranty Act, which allows for the use of Internet Web sites to disseminate warranty terms to consumers in some circumstances.

DATES: Comments must be received on or before June 17, 2016.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Amending Warranty Rules Pursuant to the E-Warranty Act, Matter No. P044403" on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc//E-WarrantyAmendments,* by following the instructions on the web-based form. If you prefer to file your comment on paper, write "Amending Warranty Rules Pursuant to the E-Warranty Act, Matter No. P044403" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex E), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex E), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Gary Ivens, (202) 326–2330, Attorney, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rules

A. The Disclosure Rule

The Disclosure Rule[1] establishes disclosure requirements for written warranties on consumer products that cost more than $15.00.[2] In 1975, the Commission issued the Disclosure Rule as authorized by Congress in the Magnuson-Moss Warranty Act[3] (MMWA).

The Disclosure Rule also specifies the aspects of warranty coverage that must be disclosed in written warranties, as well as the exact language that must be used for certain disclosures with respect to state law regarding the duration of implied warranties and the availability of consequential or incidental damages. Under the Disclosure Rule, warranty information must be disclosed in simple, easily understandable, and concise language in a single document. Similarly, the warrantor must disclose any limitations on the duration of implied warranties on the face of the warranty, as mandated by MMWA.[4] In promulgating the Disclosure Rule, the Commission determined that certain material facts about product warranties must be disclosed because the failure to do so would be deceptive or misleading.

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[1] 16 CFR part 701.

[2] 40 FR 60171–60172 (Dec. 31, 1975).

[3] 15 U.S.C. 2302.

[4] *See* 15 U.S.C. 2308(b).

Briefly, the Commission proposes to revise the Disclosure Rule to specify that disclosures mandated to appear "on the face" of a warranty posted on an Internet Web site or displayed electronically must be placed in close proximity to the location where the text of the warranty terms begins.

B. The Pre-Sale Availability Rule

The Pre-Sale Availability Rule[5] details the methods by which warrantors and sellers must provide warranty terms to consumers prior to sale of the warranted item. The Commission issued the Pre-Sale Availability Rule in response to a mandate from Congress as set forth in the MMWA.

Briefly, the Commission proposes to revise the Pre-Sale Availability Rule to allow warrantors to post warranty terms on Internet Web sites if they also provide a non-Internet based method for consumers to obtain the warranty terms and satisfy certain other conditions.

As discussed more fully below, these rule revisions are required to comply with Congress's passage of the E-Warranty Act[6] (E-Warranty or the Act). The Commission invites comment on the proposed rule revisions generally and on the specific issues outlined in Section III of this Notice. The Commission seeks comment on the proposal through June 17, 2016.

II. Background

The MMWA authorizes the Commission to prescribe rules requiring disclosure of warranty terms and requiring that the terms of any written warranty on a consumer product be made available to the prospective purchaser prior to the sale of the product.[7] In 1975, the Commission issued both the Disclosure Rule, which establishes disclosure requirements for written warranties, and the Pre-Sale Availability Rule, which includes requirements for sellers and warrantors to make the text of any warranty on a consumer product available to the consumer prior to sale. Among other things, the Pre-Sale Availability Rule requires most sellers to make warranties readily available either by: (1) Displaying the warranty document in close proximity to the product or (2) furnishing the warranty document on request and posting signs in prominent locations advising consumers that warranties are available. The Pre-Sale Availability Rule requires warrantors to provide materials to enable sellers to comply with the Rule's requirements. The Rule also sets out how sellers should make warranty information available pre-sale if selling the product at retail locations, through catalogs, mail order, or door-to-door sales.

E-Warranty amends the MMWA to allow, under certain circumstances, the posting of warranties on warrantors' Internet Web sites as an alternative method of complying with the Pre-Sale Availability Rule, and to permit sellers to make warranty terms available to consumers pre-sale via electronic means where the warrantor has chosen the online option.[8] E-Warranty charges the Commission with promulgating consistent changes to the Disclosure Rule and the Pre-Sale Availability Rule within one year of the Act's passage.[9]

III. The Commission's Proposed Rule Changes

The Commission proposes to modify the Disclosure Rule and the Pre-Sale Availability Rule to implement the E-Warranty Act and effectuate its purposes. Currently, sellers are obliged to provide warranty terms pre-sale to consumers through a variety of methods such as displaying them in close proximity to the warranted products, or by furnishing them upon request prior to sale and posting prominent signs to let customers know that warranties can be examined upon request, posting them in a catalog in close conjunction to the warranted product, or having them available for consumers' review in a door-to-door sales presentation. The proposed amendments will allow sellers the additional option of using an electronic method to make warranty terms available to consumers at the point of sale for warranted products where the warrantor has chosen the online method of disseminating the warranty terms.

Warrantors currently must provide retailers the warranty materials sellers need to meet their requirements under the Pre-Sale Availability Rule, such as providing copies of the warranty, providing warranty stickers, tags, signs, or posters, or printing the warranty on the product's packaging. The amendment does not alter the duties of warrantors who do not choose to employ an online method to supply warranty terms. The E-Warranty Act provides that warrantors who choose the online method of disseminating warranty terms must provide consumers the address of the Internet Web site where the specific product's warranty terms can be reviewed and also supply a non-Internet method, such as a phone number or mailing address, for consumers and sellers to request the warranty terms. If a consumer or seller[10] makes such a request, the warrantor must provide the warranty terms promptly and free and of charge.

The first proposed revisions alter § 701.1 to add a definition of the term "manufacturer" at § 701.1(g) (defining manufacturer as "any person engaged in the business of making a consumer product"), add that term in the definition of "warrantor," and re-letter the paragraphs in § 701.1 to account for the additional definition. The Commission proposes these revisions in light of E-Warranty's use of the term "manufacturer."

The next proposed revision adds a new § 701.1(j)(3) to specify that, in conjunction with warranty terms posted on an Internet Web site or displayed electronically, the phrase "on the face" means in close proximity to the location where the warranty terms begin. Although the Disclosure Rule does not explicitly mention online commerce, it applies to the sale of warranted consumer products online. Commission staff recently updated the .Com Disclosures to provide additional guidance on disclosure obligations in the online context. As stated in the updated .Com Disclosures, warranties communicated through visual text online are no different from paper versions and the same rules apply.[11] The Commission therefore proposes to clarify this requirement for online disclosures.

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[5] 16 CFR part 702.

[6] E-Warranty Act, Public Law 114–51 (Sept. 24, 2015).

[7] 15 U.S.C. 2302.

[8] In a recent review of the warranty interpretations, rules, and guides (16 CFR parts 700–703 and 239), which was completed before enactment of the E-Warranty Act, the Commission declined certain commenters' requests to allow brick-and-mortar sellers to refer consumers to online warranty terms as a method of complying with the Pre-Sale Availability Rule. The Commission noted that the intent of the Rule is to make warranty information available at the point of sale, so for the seller simply to refer the consumer to a Web site where the warranty could be found would be insufficient. *See* 80 FR 42710, 42717 (July 20, 2015).

[9] Under the E-Warranty Act, the Commission must issue the final amended rules by September 24, 2016. The Commission determines that taking of oral presentations from interested parties would interfere with its ability to amend the Disclosure Rule and the Pre-Sale Availability Rule in a timely fashion. Accordingly, as provided by the E-Warranty Act, the Commission waives the requirement to give interested persons an opportunity for oral presentation. *See* Public Law 114–51, sec. 3(b)(2).

[10] Sellers are given the option of requesting the warranty terms free of charge from the warrantor because not all sellers will be equipped to employ an electronic option in cases where the warrantor has chosen the online method to supply warranty terms. For example, a small seller may not have Internet access or electronic devices to download and display warranty terms for consumers' review at the point of sale. Those sellers' duties to have warranty terms available pre-sale, however, have not changed under E-Warranty. The Commission believes that requiring warrantors to supply sellers with warranty terms upon request so that sellers can make them available for consumers' review at the point of sale effectuates Congress's desire to ensure the continued availability of pre-sale warranty terms.

The next proposed revision is to § 702.1(d) to include the manufacturer in the definition of "warrantor." The Commission proposes this revision to comport with E-Warranty's use of the term "manufacturer." The next revision adds a new § 702.1(g) to define a "manufacturer" (in the same manner as the proposed revision of § 701.1(g)) as "any person engaged in the business of making a consumer product."

The next proposed revisions are to § 702.3(a) to provide that sellers can provide warranty terms pre-sale through electronic means if the warrantor of the product has chosen the online option. If a seller uses an electronic means, that seller must still make the warranty text readily available for consumers' examination prior to sale.

The proposed changes to § 702.3(b)(1)(i) would remove superfluous instances of the term "and/or" and "and" in that paragraph, as the prefatory language already notes that the warrantor must use one *or more* of the methods described in that paragraph to provide sellers with the prescribed warranty materials.

The next proposed revision adds a new § 702.3(b)(2) to reflect that, as an alternative method of compliance with the Pre-Sale Availability Rule, a warrantor may refer consumers to an accessible digital copy of the warranty by providing to the consumer the Internet address where the specific product's warranty has been posted in a clear and conspicuous manner. To employ this option, the warrantor, among other duties, must supply in the product manual, or on the product or product packaging, the Internet address where the consumer can review and obtain the specific product's warranty terms, as well as the phone number, postal mailing address, or other reasonable non-Internet based means for the consumer to request a free copy of the warranty terms.

Proposed § 702.3(b)(2)(iv) requires the warrantor utilizing the online option to provide sufficient information with the consumer product or on the Internet Web site so that the consumer can readily locate the specific product's warranty terms. The Commission believes that this requirement comports with Congress's directive that online warranties be available to consumers "in a clear and conspicuous manner."[12] Similarly, if a consumer or seller requests via phone, mail, or other reasonable non-Internet-based means, that the warrantor provide a hard copy of the warranty, proposed § 702.3(b)(2)(ii) requires the warrantor to provide it promptly and free of charge, which comports with existing pre-sale requirements for catalog and mail order sales.

The next proposed revision alters § 702.3(c)(2)(i)(B) to reflect that the mail-order or catalog seller must provide the address of the Internet Web site of the warrantor where the warranty terms can be reviewed (if such Internet Web site exists), as well as either a phone number or address that the consumer can use to request a free copy of the warranty, and notes that the copy may be provided electronically if the product's warrantor has used the online option.

Finally, the next proposed revision alters § 702.3(d)(2) to reflect that the door-to-door seller may supply the warranty through an electronic option if the product's warrantor has employed the online method.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act[13] (RFA) requires each agency either to provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[14] The FTC does not expect that the rule revisions necessitated by E-Warranty will have a significant economic impact on small sellers and warrantors. As discussed above, the proposed revisions will relieve those warrantors who choose the online method from providing warranty materials to certain sellers. Affected sellers, however, should be able easily to obtain the warranties and provide them to consumers for review at the point of sale, either by obtaining the warranties from the warrantor's Web site or by requesting a hard copy from the warrantor. Also, the proposed amendment allows sellers of goods whose warrantors have employed the online method the ability to provide pre-sale warranty terms electronically. Thus, if the proposal is adopted, a small seller that is in compliance with current law would need to take only minimal additional action to remain compliant.

The small warrantor that does not choose the Internet option to supply warranty terms can remain compliant simply by continuing with its existing practices. The small warrantor that has been including the entire warranty with the warranted product and supplying warranty materials so that sellers can meet Pre-Sale Availability Rule obligations will have a smaller compliance burden under the proposal by being able to provide the warranty terms solely on an Internet Web site. That small warrantor, however, will likely incur costs to establish a phone number, address, or other non-Internet based method that consumers and sellers can use to request a free hard copy of warranty terms.

With respect to the amendments to the Disclosure Rule, a small entity that is in compliance with current law need not take any different or additional action if the proposal is adopted, as the proposed revisions merely explain how the "on the face of the warranty" requirement applies to online warranty terms.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of "no effect." To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed rule, the number of these companies that are small entities, and the average annual burden for each entity. Although the Commission certifies under the RFA that the rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Reasons for the Proposed Rule Revisions

As outlined in Section II, above, the Commission is proposing to amend the Disclosure Rule and Pre-Sale Availability Rule in connection with Congress's passage of E-Warranty. E-Warranty allows, under certain circumstances, the posting of warranties on manufacturers' Web sites as an alternative method of complying with the Pre-Sale Availability Rule, and certain sellers' use of an electronic method to supply pre-sale warranty terms.

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[11] *See* FTC, .Com Disclosures: How to Make Effective Disclosures in Digital Advertising (2013), at 3, fn.7, available at *https://ftc.gov/os/2013/03/130312dotcomdisclosures.pdf.*

[12] *See* 15 U.S.C. 2302(b)(4)(A)(i).

[13] 5 U.S.C. 603.

[14] 5 U.S.C. 605.

B. Statement of Objectives and Legal Basis

The objective of the proposed amendments is to provide warrantors an online method of complying with the Disclosure Rule and the Pre-Sale Availability Rule, allow certain sellers to use an electronic method to provide pre-sale warranty terms to consumers, and to define what "on the face" of an online warranty means in the Disclosure Rule. The legal authority for this NPRM is the E-Warranty Act and the MMWA.

C. Description of Small Entities to Which the Rules Will Apply

The small entities to which the Disclosure Rule applies are warrantors. The small entities to which the Pre-Sale Availability Rule applies are warrantors and sellers of warranted consumer products costing more than fifteen dollars. The Disclosure Rule and the Pre-Sale Availability Rule currently define a "warrantor" as "any supplier or other person who gives or offers to give a written warranty." The Pre-Sale Availability Rule defines a "seller" as "any person who sells or offers for sale for purposes other than resale or use in the ordinary course of the buyer's business any consumer product." The proposed changes add "manufacturers" to both Rules' definitions of "warrantor." Sellers include retailers, catalog and mail order sellers, and door-to-door sellers.

In 2014, the Commission estimated that there were 13,395 small manufacturers (warrantors) and 452,553 small retailers (sellers) impacted by the Rules.[15]

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments to the Disclosure Rule do not impose any new reporting, recordkeeping, or other compliance requirements, because the proposed amendments merely explain how the existing "on the face of the warranty" requirement applies to online and electronic warranty terms.

The Pre-Sale Availability Rule imposes disclosure obligations on sellers and warrantors of warranted consumer goods actually costing more than fifteen dollars. Specifically, sellers must make warranty terms available prior to sale. Under the proposed revision, if the warrantor has chosen the online option, sellers may incur minimal additional costs if they need to request the warranty terms from the warrantor to provide them to consumers, but sellers will also have additional flexibility to make pre-sale warranty terms available to consumers electronically. Warrantors must provide sellers with warranty materials for sellers' use at the point of sale, or, under the proposed revision, provide the address of the warrantor's Internet Web site where consumers can review and obtain warranty terms in the product manual or on the product or product packaging, and the warrantor's contact information for the consumer to obtain the warranty terms via a non-Internet method.

Neither the existing Pre-Sale Availability Rule nor the proposed amendments require sellers or warrantors to retain more records than may be necessary to provide consumers the warranty terms. The small entities potentially covered by these proposed amendments will include all such entities subject to the Rules, including suppliers, manufacturers and others who warrant consumer goods costing more than fifteen dollars and retailers, catalog and mail-order sellers, and door-to-door sellers who offer the warranted products. The professional skills necessary for compliance with the Rules as modified by the proposed amendments would include (1) warrantors' office and administrative support staff to receive consumers' and sellers' requests for warranty terms using a non-Internet based method and (2) sellers' office and administrative support staff to request warranty terms for pre-sale availability to consumers for warranted goods where the warrantor has elected only the Internet option.

The Commission invites comment on the proposed amendments' impact on small sellers who might cease to receive point-of-sale warranty materials from those warrantors who choose to employ the online method to supply warranty terms.

E. Duplication, Overlap, or Conflict With Other Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed amendments. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Amendments

As noted above at footnote 8, in a recent rule review of the Pre-Sale Availability Rule, the Commission declined commenters' requests to allow offline sellers to comply with the Rule by advising buyers of the availability of the warranty at a particular Web site. The Commission noted that, because the intent of the Rule is to make warranty information available at the point of sale, a seller could not comply with its Pre-Sale Availability Rule obligations simply by referring the consumer to a Web site where the warranty could be found. The proposed revisions allow sellers to provide warranty terms electronically, but only in cases where the warrantor has chosen the online option.[16] The proposed revisions comport with Congress's desire to allow warrantors the option of providing warranty terms online, as long as warrantors offer a non-Internet based method for consumers to obtain the warranty terms, as well as with Congress's mandate that the online method not supplant the seller's duty to provide warranty terms at the point of sale.

The Commission has not proposed any specific small entity exemption, differing timetables, or other significant alternatives, as the proposed amendments are narrowly tailored to permit E-Warranty's stated objectives of allowing warrantors to post warranty terms on Internet Web sites, certain sellers to use an electronic method to provide warranty terms pre-sale to consumers, and the ancillary purpose of clarifying that "on the face of the warranty" in the Web site or electronic context means "in close proximity" to the location where the warranty text begins. The Commission does not believe a special exemption for small entities or significant compliance alternatives are necessary or appropriate to minimize the compliance burden on small entities while achieving the intended purposes of E-Warranty.

The Commission believes its proposed revisions will be minimally burdensome for small businesses and that they comply with Congress's mandate to allow warrantors to post warranty terms on an Internet Web site and certain sellers to employ a pre-sale electronic option, while ensuring pre-sale availability of warranty terms at the point of sale. The Commission, however, invites comment on regulatory alternatives that the Commission has not expressly considered for complying with the proposed rule that might reduce compliance burdens on small entities while still achieving E-Warranty's objectives.

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[15] *See* 79 FR 8185 (Feb. 11, 2014), which relates to the Pre-Sale Availability Rule, but should also apply to the Disclosure Rule.

[16] FTC staff noted in an opinion letter in 2009, however, that neither the MMWA nor its related rules prescribe making the warranty terms available only on paper. Letter from Allyson Himelfarb to Thomas Hughes (February 17, 2009), available at *https://www.ftc.gov/sites/default/files/documents/advisory_opinions/opinion-09-1/opinion0901_0.pdf.*

V. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[17] Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. Under the PRA, the Commission may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection, unless the information displays a valid control number assigned by OMB.

This proposal would amend 16 CFR parts 701 and 702. The collection of information related to the Disclosure Rule has been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3084–0111.[18] The collection of information related to the Pre-Sale Availability Rule has been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3084–0112.[19]

As explained below, the proposed amendments only slightly modify or add to information collection requirements that were previously approved by OMB. Under this proposal, a warrantor will be permitted, but not required, to use an online method for supplying warranty terms. The Commission does not believe that this proposed rule would impose any new or substantively revised collections of information as defined by the PRA.

Under the most recent proposed clearance for the Pre-Sale Availability Rule,[20] the Commission estimated the total annual hours burden to be 2,446,610. This figure represented a 20% reduction from the 2010 estimate based in large part on the growth of online sales and the online posting of warranty terms related to those sales. The Commission estimated the hours burden at 2,315,608 for retailers and 131,002 for manufacturers. The Commission estimated the total annual labor cost in 2014 to be $51,379,000 (rounded to the nearest thousand).

The Commission estimated the total annual capital or other non-labor costs to be *de minimis,* because the vast majority of retailers and warrantors already have developed systems to provide the information required by the Pre-Sale Availability Rule. Compliance by retailers typically entails keeping warranties on file, in binders or otherwise, and posting an inexpensive sign indicating warranty availability. Warrantor compliance under the proposed revisions entails providing retailers with a copy of the warranties included with their product or providing with the warranted good the address of the warrantor's Internet Web site where the consumer can review and obtain such terms, along with the contact information where the consumer may use a non-Internet based method to obtain a free copy of the warranty terms. Sellers of warranted goods for which the warrantor has chosen the online option may, unless the warrantor provides the seller a hard copy of the warranty terms to make such terms, incur a slightly increased burden because the seller will have to ensure it provides consumers a method of reviewing the warranty terms at the point of sale, prior to sale. That burden, however, should be minimal, given that the warrantor will have to make the warranty terms available on an Internet Web site, and given the proposed provision requiring the warrantor to supply a hard copy of the warranty terms, promptly and free of charge, in response to a seller's request. The Commission believes that, in light of the proposed amendment, the annual capital or other non-labor costs will continue to be *de minimis.*

Invitation To Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 17, 2016. Write "Amending Warranty Rules Pursuant to the E-Warranty Act, Matter No. P044403" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, including medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[21] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc//E-WarrantyAmendments* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write "Amending Warranty Rules Pursuant to the E-Warranty Act, Matter No. P044403" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex E), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex E), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *https://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 17, 2016. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *http://www.ftc.gov/ftc/privacy.shtm.*

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[17] 44 U.S.C. 3501–3520.

[18] *See* 78 FR 70046 (Nov. 22, 2013).

[19] *See* 79 FR 8185 (Feb. 11, 2014).

[20] *See* 78 FR 68446 (Nov. 14, 2013).

[21] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

List of Subjects in 16 CFR Parts 701 and 702

Trade practices, Warranties.

For the reasons set forth in the preamble, the Commission proposes to amend 16 CFR part 701 as follows:

PART 701—DISCLOSURE OF WRITTEN CONSUMER PRODUCT WARRANTY TERMS AND CONDITIONS

■ 1. The authority citation for this part continues to read as follows:

Authority: 15 U.S.C. 2302 and 2309.

■ 2. Amend § 701.1 by redesignating paragraphs (g) through (i) as paragraphs (h) through (j), adding new paragraph (g), and revising redesignated paragraph (j) to read as follows:

§ 701.1 Definitions.

* * * * *

(g) *Manufacturer* means any person engaged in the business of making a consumer product.

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(j) *On the face of the warranty* means:

(1) Where the warranty is a single sheet with printing on both sides of the sheet or where the warranty is comprised of more than one sheet, the page on which the warranty text begins;

(2) Where the warranty is included as part of a larger document, such as a use and care manual, the page in such document on which the warranty text begins;

(3) Where the warranty is on an Internet Web site or displayed electronically, in close proximity to the location where the warranty text begins.

PART 702—PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

■ 3. The authority citation for part 702 continues to read as follows:

Authority: 15 U.S.C. 2302 and 2309.

■ 4. Amend § 702.1 by revising paragraph (d) and adding paragraph (g) to read as follows:

§ 702.1 Definitions.

* * * * *

(d) *Warrantor* means any supplier, manufacturer, or other person who gives or offers to give a written warranty.

* * * * *

(g) *Manufacturer* means any person engaged in the business of making a consumer product.

■ 5. Revise § 702.3 to read as follows:

§ 702.3 Pre-sale availability of written warranty terms.

The following requirements apply to consumer products actually costing the consumer more than $15.00:

(a) *Duties of seller.* Except as provided in paragraphs (c) and (d) of this section, the seller of a consumer product with a written warranty shall make a text of the warranty readily available for examination by the prospective buyer by:

(1) Displaying it in close proximity to the warranted product (including through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section), or

(2) Furnishing it upon request prior to sale (including through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section) and placing signs reasonably calculated to elicit the prospective buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of warranties upon request.

(b) *Duties of the warrantor.* (1) A warrantor who gives a written warranty warranting to a consumer a consumer product actually costing the consumer more than $15.00 shall:

(i) Provide sellers with warranty materials necessary for such sellers to comply with the requirements set forth in paragraph (a) of this section, by the use of one or more by the following means:

(A) Providing a copy of the written warranty with every warranted consumer product;

(B) Providing a tag, sign, sticker, label, decal or other attachment to the product, which contains the full text of the written warranty;

(C) Printing on or otherwise attaching the text of the written warranty to the package, carton, or other container if that package, carton or other container is normally used for display purposes. If the warrantor elects this option a copy of the written warranty must also accompany the warranted product; or

(D) Providing a notice, sign, or poster disclosing the text of a consumer product warranty. If the warrantor elects this option, a copy of the written warranty must also accompany each warranted product.

(ii) Provide catalog, mail order, and door-to-door sellers with copies of written warranties necessary for such sellers to comply with the requirements set forth in paragraphs (c) and (d) of this section.

(2) As an alternative method of compliance with paragraph (b)(1) of this section, a warrantor may provide the warranty terms in an accessible digital format on the warrantor's Internet Web site. If the warrantor elects this option, the warrantor must:

(i) Provide information to the consumer that will inform the consumer how to obtain warranty terms by indicating, in a clear and conspicuous manner, in the product manual or on the product or product packaging:

(A) The Internet Web site of the warrantor where such warranty terms can be reviewed; and

(B) The phone number, the postal mailing address of the warrantor, or other reasonable non-Internet based means for the consumer to request a copy of the warranty terms;

(ii) Provide a hard copy of the warranty terms promptly and free of charge upon request by a consumer or seller made pursuant to paragraph (b)(2)(i)(B) of this section;

(iii) Ensure that warranty terms are posted in a clear and conspicuous manner and remain accessible to the consumer on the Internet Web site of the warrantor; and

(iv) Provide information with the consumer product or on the Internet Web site of the warrantor sufficient to allow the consumer to readily identify on such Internet Web sites the warranty terms that apply to the specific product purchased by the consumer.

(3) Paragraph (a)(1) of this section shall not be applicable with respect to statements of general policy on emblems, seals or insignias issued by third parties promising replacement or refund if a consumer product is defective, which statements contain no representation or assurance of the quality or performance characteristics of the product; provided that

(i) The disclosures required by § 701.3(a)(1) through (9) of this part are published by such third parties in each issue of a publication with a general circulation, and

(ii) Such disclosures are provided free of charge to any consumer upon written request.

(c) *Catalog and mail order sales.* (1) For purposes of this paragraph:

(i) Catalog or mail order sales means any offer for sale, or any solicitation for an order for a consumer product with a written warranty, which includes instructions for ordering the product which do not require a personal visit to the seller's establishment.

(ii) Close conjunction means on the page containing the description of the warranted product, or on the page facing that page.

(2) Any seller who offers for sale to consumers consumer products with written warranties by means of a catalog or mail order solicitation shall:

(i) Clearly and conspicuously disclose in such catalog or solicitation in close conjunction to the description of warranted product, or in an information section of the catalog or solicitation clearly referenced, including a page number, in close conjunction to the description of the warranted product, either:

(A) The full text of the written warranty; or

(B) The address of the Internet Web site of the warrantor where such warranty terms can be reviewed (if such Internet Web site exists), as well as that the written warranty can be obtained free upon specific request, and the address or phone number where such warranty can be requested. If this option is elected, such seller shall promptly provide a copy of any written warranty requested by the consumer (and may provide such copy through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section).

(ii) [Reserved].

(d) *Door-to-door sales.* (1) For purposes of this paragraph:

(i) *Door-to-door sale* means a sale of consumer products in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by a buyer, and the buyer's agreement to offer to purchase is made at a place other than the place of business of the seller.

(ii) *Prospective buyer* means an individual solicited by a door-to-door seller to buy a consumer product who indicates sufficient interest in that consumer product or maintains sufficient contact with the seller for the seller reasonably to conclude that the person solicited is considering purchasing the product.

(2) Any seller who offers for sale to consumers consumer products with written warranties by means of door-to-door sales shall, prior to the consummation of the sale, disclose the fact that the sales representative has copies of the warranties for the warranted products being offered for sale, which may be inspected by the prospective buyer at any time during the sales presentation. Such disclosure shall be made orally and shall be included in any written materials shown to prospective buyers. If the warrantor has elected the option described in paragraph (b)(2) of this section, the sales representative may provide a copy of the warranty through electronic or other means.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–12030 Filed 5–23–16; 8:45 am]

BILLING CODE 6750–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–4388; File No. S7–08–16]

Performance-Based Investment Advisory Fees

AGENCY: Securities and Exchange Commission.

ACTION: Notice of intent to issue order.

SUMMARY: The Securities and Exchange Commission ("Commission") intends to issue an order that would adjust for inflation, as appropriate, dollar amount thresholds in the rule under the Investment Advisers Act of 1940 that permits investment advisers to charge performance-based fees to "qualified clients." Under that rule, an investment adviser may charge performance-based fees if a "qualified client" has a certain minimum net worth or minimum dollar amount of assets under the management of the adviser. The Commission's order would increase, to reflect inflation, the minimum net worth that a "qualified client" must have under the rule. The order would not increase the minimum dollar amount of assets under management.

DATES: Hearing or Notification of Hearing: An order adjusting the dollar amount tests specified in the definition of "qualified client" will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary. Hearing requests should be received by the Commission's Office of the Secretary by 5:30 p.m. on June 13, 2016. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Amanda Hollander Wagner, Senior Counsel, Investment Company Rulemaking Office, at (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission intends to issue an order under the Investment Advisers Act of 1940 ("Advisers Act" or "Act").[1]

I. Background

Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into, extending, renewing, or performing any investment advisory contract that provides for compensation to the adviser based on a share of capital gains on, or capital appreciation of, the funds of a client.[2] Congress prohibited these compensation arrangements (also known as performance compensation or performance fees) in 1940 to protect advisory clients from arrangements that Congress believed might encourage advisers to take undue risks with client funds to increase advisory fees.[3] In 1970, Congress provided an exception from the prohibition for advisory contracts relating to the investment of assets in excess of $1,000,000,[4] if an appropriate "fulcrum fee" is used.[5] Congress subsequently authorized the Commission to exempt, by rule or order, any advisory contract from the performance fee prohibition if the contract is with persons who the

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[1] 15 U.S.C. 80b. Unless otherwise noted, all references to statutory sections are to the Investment Advisers Act, and all references to rules under the Investment Advisers Act, including rule 205–3, are to Title 17, Part 275 of the Code of Federal Regulations [17 CFR 275].

[2] 15 U.S.C. 80b–5(a)(1).

[3] H.R. Rep. No. 2639, 76th Cong., 3d Sess. 29 (1940). Performance fees were characterized as "heads I win, tails you lose" arrangements in which the adviser had everything to gain if successful and little, if anything, to lose if not. S. Rep No. 1775, 76th Cong., 3d Sess. 22 (1940).

[4] 15 U.S.C. 80b–5(b)(2). Trusts, governmental plans, collective trust funds, and separate accounts referred to in section 3(c)(11) of the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. 80a–3(c)(11)] are not eligible for this exception from the performance fee prohibition under section 205(b)(2)(B) of the Advisers Act.

[5] 15 U.S.C. 80b–5(b). A fulcrum fee generally involves averaging the adviser's fee over a specified period and increasing or decreasing the fee proportionately with the investment performance of the company or fund in relation to the investment record of an appropriate index of securities prices. *See* rule 205–2 under the Advisers Act; Adoption of Rule 205–2 under the Investment Advisers Act of 1940, As Amended, Definition of "Specified Period" Over Which Asset Value of Company or Fund Under Management is Averaged, Investment Advisers Act Release No. 347 (Nov. 10, 1972) [37 FR 24895 (Nov. 23, 1972)].

In 1980, Congress added another exception to the prohibition against charging performance fees, for contracts involving business development companies under certain conditions. *See* section 205(b)(3) of the Advisers Act.

Commission determines do not need the protections of that prohibition.[6]

The Commission adopted rule 205–3 in 1985 to exempt an investment adviser from the prohibition against charging a client performance fees in certain circumstances.[7] The rule, when adopted, allowed an adviser to charge performance fees if the client had at least $500,000 under management with the adviser immediately after entering into the advisory contract (“assets-under-management test”) or if the adviser reasonably believed, immediately prior to entering into the advisory contract, that the client had a net worth of more than $1,000,000 at the time the contract was entered into (“net worth test”). The Commission stated that these standards would limit the availability of the exemption to clients who are financially experienced and able to bear the risks of performance fee arrangements.[8] In 1998, the Commission amended rule 205–3 to, among other things, change the dollar amounts of the assets-under-management test and net worth test to adjust for the effects of inflation since 1985.[9] The Commission revised the former from $500,000 to $750,000, and the latter from $1,000,000 to $1,500,000.[10]

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)[11] amended section 205(e) of the Advisers Act to provide that, by July 21, 2011 and every five years thereafter, the Commission shall adjust for inflation the dollar amount thresholds included in rules issued under section 205(e), rounded to the nearest $100,000.[12] In May 2011, the Commission published a release (the “May 2011 Release”) that included a notice of intent to issue an order revising the dollar amount thresholds of the assets-under-management test (from $750,000 to $1,000,000) and the net worth test (from $1,500,000 to $2,000,000).[13] The Commission issued an order to revise the dollar amount thresholds of the assets-under-management and net worth tests, as described above, on July 12, 2011.[14]

The May 2011 Release also proposed amendments to rule 205–3 providing, among other things, that the Commission would issue an order every five years in the future adjusting the rule's dollar amount thresholds for inflation.[15] On February 15, 2012, the Commission adopted these proposed amendments, which amended rule 205–3 in three ways to carry out the inflation adjustment of the rule's dollar amount thresholds.[16] First, the amendments revised the dollar amount thresholds in rule 205–3, in order to codify the order the Commission issued on July 12, 2011.[17] Second, the amendments added to rule 205–3, as proposed, a new paragraph stating that the Commission will issue an order on or about May 1, 2016, and approximately every five years thereafter, adjusting for inflation the dollar amount thresholds of the rule's assets-under-management and net worth tests.[18] Finally, the amendments to rule 205–3 specify the price index on which future inflation adjustments will be based—the Personal Consumption Expenditures Chain-Type Price Index (“PCE Index”), which is published by the United States Department of Commerce.[19] The PCE Index is an indicator of inflation in the personal sector of the U.S. economy[20] and is used in other provisions of the federal securities laws, including the determination of whether a person meets a specific net worth minimum in Regulation R under the Securities Exchange Act of 1934 [15 U.S.C. 78a].[21]

II. Discussion

A. Order Adjusting Dollar Amount Tests

Pursuant to section 418 of the Dodd-Frank Act and rule 205–3(e), today we are providing notice[22] that the Commission intends to issue an order making the required inflation adjustment to the assets-under-management test and the net worth test in the definition of “qualified client” in rule 205–3. As discussed above, section 418 of the Dodd-Frank Act and rule 205–3(e) require that we adjust the dollar amount thresholds of the rule by order on or about May 1, 2016 and every five years thereafter.[23] We intend to issue an order that would maintain the dollar amount of the assets-under-management test at $1,000,000, and would increase the dollar amount of the net worth test from $2,000,000 to

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[6] Section 205(e) of the Advisers Act. Section 205(e) of the Advisers Act authorizes the Commission to exempt conditionally or unconditionally from the performance fee prohibition advisory contracts with persons who the Commission determines do not need its protections. Section 205(e) provides that the Commission may determine that persons do not need the protections of section 205(a)(1) on the basis of such factors as “financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with [section 205].”

[7] Exemption To Allow Registered Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 996 (Nov. 14, 1985) [50 FR 48556 (Nov. 26, 1985)] (“1985 Adopting Release”). The exemption applies to the entrance into, performance, renewal, and extension of advisory contracts. *See* rule 205–3(a).

[8] *See* 1985 Adopting Release, *supra* note 7, at Sections I.C and II.B. The rule also imposed other conditions, including specific disclosure requirements and restrictions on calculation of performance fees. *See id.* at Sections II.C–E.

[9] *See* Exemption To Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 1731 (July 15, 1998) [63 FR 39022 (July 21, 1998)].

[10] *See id.* at Section II.B.1.

[11] Public Law 111–203, 124 Stat. 1376 (2010).

[12] *See* section 418 of the Dodd-Frank Act (requiring the Commission to issue an order every five years revising dollar amount thresholds in a rule that exempts a person or transaction from section 205(a)(1) of the Advisers Act if the dollar amount threshold was a factor in the Commission's determination that the persons do not need the protections of that section).

[13] *See* Investment Adviser Performance Compensation, Investment Advisers Act Release No. 3198 (May 10, 2011) [76 FR 27959 (May 13, 2011)].

[14] *See* Order Approving Adjustment for Inflation of the Dollar Amount Tests in Rule 205–3 under the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3236 (July 12, 2011) [76 FR 41838 (July 15, 2011)] (“2011 Order”). The 2011 Order was effective as of September 19, 2011. *Id.* The 2011 Order applies to contractual relationships entered into on or after the effective date and does not apply retroactively to contractual relationships previously in existence.

[15] *See* May 2011 Release, *supra* note 13.

[16] *See* Investment Adviser Performance Compensation, Investment Advisers Act Release No. 3372 (Feb. 15, 2012) [77 FR 10358 (Feb. 22, 2012)].

[17] *See* rule 205–3(d)(1)(i) and (ii).

[18] *See* rule 205–3(e).

[19] *See* rule 205–3(e)(1).

[20] *See, e.g.,* Jo Craven McGinty, *CPI vs. PCE: Untangling the Alphabet Soup of Inflation Gauges,* The Wall Street Journal (Mar. 20, 2015), *available at http://www.wsj.com/articles/cpi-vs-pce-untangling-the-alphabet-soup-of-inflation-gauges-1426867398;* Clinton P. McCully, Brian C. Moyer, and Kenneth J. Stewart, “Comparing the Consumer Price Index and the Personal Consumption Expenditures Price Index,” Survey of Current Business (Nov. 2007) at 26 n.1 (PCE Index measures changes in “prices paid for goods and services by the personal sector in the U.S. national income and product accounts” and is primarily used for macroeconomic analysis and forecasting).

[21] *See* Definitions of Terms and Exemptions Relating to the “Broker” Exceptions for Banks, Securities Exchange Act Release No. 56501 (Sept. 24, 2007) [72 FR 56514 (Oct. 3, 2007)] (adopting periodic inflation adjustments to the fixed-dollar thresholds for both “institutional customers” and “high net worth customers” under Rule 701 of Regulation R); *see also* Amendments to Form ADV, Investment Advisers Act Release No. 3060 (July 28, 2010) [75 FR 49234 (Aug. 12, 2010)] (increasing for inflation the threshold amount for prepayment of advisory fees that triggers an adviser's duty to provide clients with an audited balance sheet and the dollar threshold triggering the exception to the delivery of brochures to advisory clients receiving only impersonal advice).

The Dodd-Frank Act also requires the use of the PCE Index to calculate inflation adjustments for the cash limit protection of each investor under the Securities Investor Protection Act of 1970. *See* section 929H(a) of the Dodd-Frank Act.

[22] *See* section 211(c) of the Advisers Act (requiring the Commission to provide appropriate notice of and opportunity for hearing for orders issued under the Advisers Act).

[23] *See supra* notes 12 and 18 and accompanying text.

$2,100,000. As required under rule 205–3, both dollar amounts would take into account the effects of inflation by reference to historic and current levels of the PCE Index. While the dollar amount of the assets-under-management test would not change, because the amount of the Commission's inflation adjustment calculation is smaller than the rounding amount specified under rule 205–3, the dollar amount of the net worth test would be adjusted as a result of the Commission's inflation adjustment calculation effected pursuant to the rule.[24]

We anticipate that future changes to the dollar amount tests that are issued by order will be reflected in technical amendments to rule 205–3(d), which would be adopted after such order is issued.[25]

B. Effective Date

We anticipate that, if we issue the order described above, the effective date will be 60 days following the order date.[26] To the extent that contractual relationships are entered into prior to the order's effective date, the dollar amount test adjustments in the order would not generally apply retroactively to such contractual relationships, subject to the transition rules incorporated in rule 205–3.[27]

By the Commission.

Dated: May 18, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–12167 Filed 5–23–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 61

RIN 1110–AA32

National Environmental Policy Act Procedures

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice of proposed rule; request for public comment.

SUMMARY: The Department of Justice is proposing to promulgate regulations establishing the Federal Bureau of Investigation's (FBI's) National Environmental Policy Act (NEPA) procedures. These proposed regulations would establish a process for the FBI's implementation of NEPA, Executive Order 11514, Executive Order 12114, and Council on Environmental Quality (CEQ) and Department of Justice (Department) regulations addressing the procedural provisions of NEPA. Pursuant to CEQ regulations, the FBI is soliciting comments on the proposed FBI NEPA regulations from members of the interested public.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before July 25, 2016. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: Submit comments online at *http://www.regulations.gov*. Submit written comments by addressing them to FBI NEPA Comments, ATTN: Scott A. Bohnhoff, 935 Pennsylvania Ave. NW., Room WB–460, Washington, DC 20535 or by facsimile to 202–436–7248.

FOR FURTHER INFORMATION CONTACT: Scott Bohnhoff, FBI Occupational Safety and Environmental Programs (OSEP) Unit Chief; Email: *Scott.Bohnhoff@ic.fbi.gov;* Telephone: (202) 436–7500.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

Electronic comments are preferred. For comments sent via U.S. Postal Service, please do not submit duplicate electronic or facsimile comments. Please confine comments to the proposed rule.

All submissions received must include the agency name (FBI) and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Explanation of Proposed Rule

CEQ's NEPA implementing regulations contained in 40 CFR parts 1500 through 1508 require each Federal agency to adopt procedures (40 CFR 1507.3) to ensure that decisions are made in accordance with the policies and purposes of NEPA (40 CFR 1505.1). The Department has established such policies and procedures at 28 CFR part 61. The FBI NEPA Program has been established to supplement the Department's procedures and to ensure that environmental considerations are fully integrated into the FBI's mission activities.

The FBI NEPA regulations are intended to promote reduction of paperwork by providing guidelines for development of streamlined and focused NEPA documents and to reduce delay by integrating the NEPA process into the early stages of planning. They are also intended to promote transparency by ensuring that NEPA documents are written in plain language and follow a clear format so that they are easily understood by the public and all parties involved in implementation of the proposed action.

The FBI NEPA regulations are not intended to serve as a comprehensive NEPA guide, but will serve as a framework for the FBI NEPA Program. The FBI plans to apply its NEPA regulations in conjunction with NEPA, the CEQ regulations (40 CFR parts 1500 through 1508), the Department's implementing regulations (28 CFR part

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[24] Specifically, rule 205–3(e) provides that the adjusted dollar amounts shall be computed by: (1) Dividing the year-end value of the PCE Index (or any successor index thereto) for the calendar year preceding the calendar year in which the order is being issued (in this case, 2015), by the year-end value of the PCE Index (or successor) for the calendar year 1997 (such quotient, the "Adjustment Percentage"); (2) for the assets-under-management test, multiplying $750,000 by the Adjustment Percentage and rounding the product to the nearest multiple of $100,000; and (3) for the net worth test, multiplying $1,500,000 by the Adjustment Percentage and rounding the product to the nearest multiple of $100,000.As of April 8, 2016, the end-of-year 2015 PCE Index was 109.819, and the end-of-year 1997 PCE Index was 79.657. Assets-under-management test calculation to adjust for the effects of inflation: (109.819/79.657) × $750,000 = $1,033,986.34; $1,033,986.34 rounded to the nearest multiple of $100,000 = $1,000,000. Net worth test calculation to adjust for the effects of inflation: (109.819/79.657) × $1,500,000 = $2,067,972.68; $2,067,972.68 rounded to the nearest multiple of $100,000 = $2,100,000.The values of the PCE Index are available from the Bureau of Economic Analysis, a bureau of the United States Department of Commerce. *See http://www.bea.gov; see also* Bureau of Economic Analysis, Table 2.3.4., "Price Indexes for Personal Consumption Expenditures by Major Type of Product," *available at http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=1&isuri=1&903=64* (last visited April 8, 2016).

[25] *See* May 2011 Release, *supra* note 13, at n.27 (noting that the Commission anticipated, when it issued its notice of intent to issue an order revising the dollar amount thresholds of the assets-under-management test and the net worth test, that "future changes to the dollar amount test that are issued by order, will be reflected in technical amendments to rule 205–3").

[26] When the Commission issued the 2011 Order adjusting the dollar amount tests of rule 205–3 as described above, the 2011 Order's effective date was approximately 60 days following its issuance. *See supra* note 14.

[27] *See* rule 205–3(c)(1) ("If a registered investment adviser entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of this section; Provided, however, that if a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), the conditions of this section in effect at that time will apply with regard to that person or company."); *see also* May 2011 Release, *supra* note 13, at section II.B.3.

61), and all other applicable environmental regulations, executive orders, statutes, and laws developed for the protection of the environment.

The FBI will, as appropriate, keep the public informed of the FBI NEPA program and NEPA actions and ensure that relevant environmental documents, comments, and responses accompany proposals through all levels of decision making (40 CFR 1505.1(d)). The FBI's NEPA program will be implemented primarily by the following key persons within the FBI:

- *The Environmental Executive/Bureau Designated Environmental, Safety and Health Official (DESHO)* will maintain signature authority over all Findings of No Significant Impact (FONSIs) and Records of Decision (RODs); oversee the FBI NEPA Program; ensure that NEPA reviews are initiated as early as possible in the project planning process; ensure that decisions are made in accordance with the general policies and purposes of NEPA; and use his or her best efforts to ensure that sufficient funds are available to perform NEPA management-related planning, actions, and reporting. These responsibilities may be delegated to the Program Deputy Bureau DESHO.
- *The Program Deputy Bureau DESHO* will designate and assign duties to the FBI NEPA Program Manager; ensure that the FBI NEPA Program is coordinated with other environmental policies and directives; review the FBI NEPA Program metrics; and sign FONSIs and RODs as delegated by the Environmental Executive/Bureau DESHO.
- *The FBI NEPA Program Manager* will serve as the FBI's primary, centralized NEPA contact; provide for overall development, implementation, coordination, administration, and quality assurance measures associated with the FBI NEPA Program; advise FBI employees on NEPA matters; establish and ensure implementation of FBI-wide NEPA policy, guidance, and training; and review NEPA documentation.
- *Deputy Bureau DESHOs* are heads of the FBI branches, divisions, or offices reporting directly to the FBI Deputy Director or Associate Deputy Director who, within their span of control, will ensure the NEPA program is properly implemented and managed; use their best efforts to ensure that sufficient funds within their branches, divisions, and offices are available to perform NEPA management-related planning, actions, and reporting; and assign staff to fill NEPA roles as required.

Regulatory Certifications

Executive Orders 12866 and 13563—Regulatory Planning and Review

These proposed regulations have been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," section 1(b), General Principles of Regulation.

The Department has determined that these proposed regulations are not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly, they have not been reviewed by the Office of Management and Budget.

Both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Department has assessed the costs and benefits associated with implementation of these proposed regulations and believes that the regulatory approach selected maximizes net benefits by better enabling the FBI to comply with NEPA. Further benefits associated with implementation of these proposed regulations include: A streamlined approach to performing NEPA reviews, which is expected to lead to a reduction in delay and excessive paperwork; enhanced environmental awareness; collaborative and participatory public involvement; clear compliance guidelines resulting in reduced liability risk; and enhanced cost savings arising from fewer requirements to prepare Environmental Assessments (EAs) where projects are covered by categorical exclusions (CATEXs).

The FBI contracts out, on average, twenty EAs annually for actions that would be covered by the CATEXs instated by the proposed regulations. The average contracting costs associated with development of each of these EAs is approximately $50,000. Therefore, the proposed rule would result in an annual cost savings of approximately $1,000,000 in contract payouts. The FBI anticipates that its own staffing costs with regard to NEPA compliance will remain roughly the same upon adoption of the new rule, as FBI personnel will still be involved in reviewing projects and developing and implementing a NEPA compliance strategy for each one.

The exact impact of the proposed regulations on staffing and funding requirements cannot be calculated due to uncertainty about the number of future projects and the level at which environmental review will occur (CATEX, EA, or Environmental Impact Statement (EIS)). However, as discussed in the preceding paragraphs, the FBI estimates a net annual cost savings of up to $1,000,000.

Executive Order 13132—Federalism

These proposed regulations will not have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. In accordance with Executive Order 13132, these proposed regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Department, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed these proposed regulations and, by approving them, certifies that these regulations will not have a substantial economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

These proposed regulations will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not substantially or uniquely affect small governments. Therefore, no action was deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

These proposed regulations are not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, (5 U.S.C. 804). These proposed regulations will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or have substantial adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Paperwork Reduction Act of 1995

The collection of information contained in this notice of proposed rulemaking will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

The proposed regulations are intended to promote reduction of paperwork by providing guidelines for the development of streamlined and focused NEPA documents and to reduce delay by integrating the NEPA process into the early stages of planning. They are also intended to promote transparency by ensuring that NEPA documents are written in plain language and follow a clear format so that they are easily comprehensible by the public and all parties involved in implementation of the proposed action. A CATEX is a category of actions that, barring extraordinary circumstances, do not individually or cumulatively have a significant effect on the quality of the human environment and for which neither an EA nor an EIS is required. Using CATEXs for such activities reduces unnecessary paperwork and delay. The estimated average document length is 15 pages for an EA and 150 pages for an EIS. EAs, EISs, and their associated administrative records must be retained for at least six years after signature of the NEPA decision document. By contrast, a CATEX requires either no documentation or very brief documentation (records of environmental consideration documenting CATEXs are typically only a few pages long). The estimated total annual NEPA documentation burden associated with these regulations is unknown at this time due to the uncertainty of the number of projects that will require various levels of NEPA review.

National Environmental Policy Act

The Council on Environmental Quality regulations do not direct agencies to prepare a NEPA analysis or document before establishing agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: Those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The issuance of regulations establishing categorical exclusions does not itself require NEPA analysis and documentation. *See, e.g., Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd,* 230 F.3d 947, 954–55 (7th Cir. 2000).

List of Subjects in 28 CFR Part 61

Environmental impact statements.

Authority and Issuance

Accordingly, part 61 of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 61—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301; Executive Order No. 11991.

■ 2. Add appendix F to part 61 to read as follows:

Appendix F to Part 61—Federal Bureau of Investigation Procedures Relating to the Implementation of the National Environmental Policy Act

1. Authority

These procedures are issued pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, regulations of the Council on Environmental Quality (CEQ), 40 CFR part 1500, regulations of the Department of Justice (Department), 28 CFR part 61, the Environmental Quality Improvement Act of 1970, as amended, 42 U.S.C. 4371, *et seq.*, and Executive Order 11514 of March 5, 1970, "Protection and Enhancement of Environmental Quality," as amended by Executive Order 11991 of May 24, 1977.

2. Purpose

The Federal Bureau of Investigation (FBI) NEPA Program has been established to assist the FBI in integrating environmental considerations into the FBI's mission and activities. The FBI NEPA regulations have been developed to supplement CEQ and Department NEPA regulations by outlining internal FBI policy and procedures. Through these provisions, the FBI shall promote compliance with NEPA and CEQ's implementing regulations, encourage environmental sustainability by integrating environmental considerations into mission and planning activities, and ensure that environmental analyses reflect consideration of non-regulatory requirements included in Federal orders, directives, and policy guidance.

3. Agency Description

The FBI is an intelligence-driven national security and law enforcement component within the Department of Justice. The FBI's mission is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to Federal, state, municipal, and international agencies and partners. General types of FBI actions include:

(a) Operational activities, including the detection, investigation, and prosecution of crimes against the United States and the collection of intelligence.

(b) Training activities, including the training of Federal, state, local, and foreign law enforcement personnel.

(c) Real estate activities, including acquisitions and transfers of land and facilities and leasing.

(d) Construction, including new construction, renovations, repair, and demolition of facilities, infrastructure, utilities systems, and other systems.

(e) Property maintenance and management activities, including maintenance of facilities, equipment, and grounds and management of natural resources.

(f) Administrative and regulatory activities, including personnel management, procurement of goods and services, and preparation of regulations and policy guidance.

4. NEPA Documentation and Decision Making

The FBI will use the NEPA process as a tool to ensure an interdisciplinary review of its actions and to ensure that impacts of those actions on the quality of the human environment are given appropriate consideration in FBI decisions; to identify and assess reasonable alternatives to its actions; and to facilitate early and open communication, when practicable, with the public and other agencies and organizations.

(a) Level of NEPA Analysis

The level of NEPA analysis will depend on the context and intensity of the environmental impacts associated with the proposed action. Environmental Assessments (EAs) and Environmental Impact Statements (EISs) should include a reasonable range of alternatives, and should also include descriptions of other alternatives that the decision maker determined did not require detailed study, with a brief discussion of the reasons for such determinations. If there are no reasonable alternatives, the EA or EIS must explain why no reasonable alternative exists. The decision maker must consider all the alternatives discussed in the EA or EIS. The decision maker may choose an alternative that is not expressly described in a draft EA or EIS, provided it is qualitatively within the spectrum of alternatives that were discussed in the draft.

(b) Responsibility for NEPA Analysis

(1) The FBI's responsibility for NEPA review of actions shall be determined on a case-by-case basis depending on the extent to which the entire project will be within the FBI's jurisdiction and on other factors. For example, if a project involves the construction of a facility, the relevant factors include: The extent of FBI control and funding in the construction or use of the facility, whether the facility is being built solely for FBI requirements, and whether the project would proceed without FBI action.

(2) The extent of the FBI's responsibility for NEPA review of joint Federal actions, where the FBI and another Federal agency are cooperating on a project, will be determined on a case-by-case basis depending on which agency is designated as the lead agency and which is the cooperating agency.

(3) In cases where FBI actions are a component of a larger project involving a private action or an action by a local or state government, the FBI's proposed action analyzed in the NEPA document will include only the portions of the project over which the FBI has sufficient control and responsibility to warrant Federal review. However, the cumulative impacts analysis will account for past, present, and reasonably foreseeable future activities affecting the same natural resources as the FBI project. When actions are planned by private or other non-Federal entities, the FBI will provide the potential applicant reasonably foreseeable requirements for studies or other information for subsequent FBI action. In addition, the FBI will consult with appropriate state and local agencies, tribal entities, interested private persons, and organizations early in a project's planning process when the FBI's involvement is reasonably foreseeable.

(4) Whenever appropriate and practicable, the FBI will incorporate by reference and rely upon the environmental analyses and reviews of other Federal, tribal, state, and local agencies.

5. Categorical Exclusions

(a) Categorical Exclusion (CATEX) Criteria (40 CFR 1508.4)

A CATEX is a category of actions that, barring extraordinary circumstances, do not individually or cumulatively have a significant effect on the quality of the human environment and for which neither an EA nor an EIS is required. Using CATEXs for such activities reduces unnecessary paperwork and delay. Such activities are not excluded from compliance with other applicable Federal, state, or local environmental laws. To qualify for a CATEX, an action must meet all of the following criteria:

(1) The proposed action fits entirely within one or more of the CATEXs;

(2) The proposed action has not been segmented and is not a piece of a larger action. For purposes of NEPA, actions must be considered in the same review if it is reasonably foreseeable that the actions are connected (*e.g.*, where one action depends on another).

(3) No extraordinary circumstances exist that would cause the normally excluded proposed action to have significant environmental effects. Extraordinary circumstances are assumed to exist when the proposed action is likely to involve any of the following circumstances:

(i) An adverse effect on public health or safety;

(ii) An adverse effect on Federally listed endangered or threatened species, marine mammals, or critical habitat;

(iii) An adverse effect on archaeological resources or resources listed or determined to be eligible for listing in the National Register of Historic Places;

(iv) An adverse effect on an environmentally sensitive area, including floodplains, wetlands, streams, critical migration corridors, and wildlife refuges;

(v) A material violation of a Federal, state, or local environmental law by the FBI;

(vi) An effect on the quality of the human or natural environment that is likely to be highly scientifically controversial or uncertain, or likely to involve unique or unknown environmental risks;

(vii) Establishment of precedents or decisions in principle for future action(s) that have the potential for significant impacts (*e.g.*, master plans, Integrated Natural Resource Management Plans, Integrated Cultural Resource Management Plans);

(viii) Significantly greater scope or size than normally experienced for a particular category of action;

(ix) Potential for substantial degradation of already existing poor environmental conditions;

(x) Initiation of a potentially substantial environmental degrading influence, activity, or effect in areas not already substantially modified; or

(xi) A connection to other actions with individually insignificant, but cumulatively significant, impacts.

(b) Documentation of CATEX Usage

As noted in paragraph (c) of this section, certain FBI actions qualifying for a CATEX have been predetermined to have a low risk of extraordinary circumstances and, as such, have been designated as not requiring preparation of a Record of Environmental Consideration (REC) Determination Form. A REC Determination Form must be prepared for all other FBI actions subject to NEPA review. The REC Determination Form will help determine if the proposed action falls within a category of actions that has been excluded from further NEPA review or if the action will require further analysis through an EA or EIS. The REC Determination Form will also identify any extraordinary circumstances that require the FBI to perform an EA or an EIS for an action that would otherwise qualify for a CATEX.

(c) List of No REC Required (NR) FBI CATEXs

(NR1) Reductions, realignments, or relocation of personnel, equipment, or mobile assets that do not result in changing the use of the space in such a way that could cause environmental effects or exceed the infrastructure capacity outside of FBI-managed property. An example of exceeding the infrastructure capacity would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.

(NR2) Personnel, fiscal, management, and administrative activities, including recruiting, processing, paying, contract administration, recordkeeping, budgeting, personnel actions, and travel.

(NR3) Decisions to close facilities, decommission equipment, or temporarily discontinue use of facilities or equipment, where the facility or equipment is not used to prevent or control environmental impacts. This excludes demolition actions.

(NR4) Preparation of policies, procedures, manuals, and other guidance documents for which the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and for which the applicability of the NEPA process will be evaluated upon implementation, either collectively or case-by-case.

(NR5) Grants of license, easement, or similar arrangements for use by vehicles (not to include substantial increases in the number of vehicles loaded); electrical, telephone, and other transmission and communication lines; pipelines, pumping stations, and facilities for water, wastewater, stormwater, and irrigation; and for similar utility and transportation uses. Construction or acquisition of new facilities are not included.

(NR6) Acquisition, installation, operation, and maintenance of temporary equipment, devices, or controls necessary to mitigate effects of FBI's missions on health and the environment. This CATEX is not intended to cover facility construction or related activities. Examples include:

(i) Temporary sediment and erosion control measures required to meet applicable Federal, tribal, state, or local requirements;

(ii) Installation of temporary diversion fencing to prevent earth disturbance within sensitive areas during construction activities; and

(iii) Installation of temporary markers to delineate limits of earth disturbance in forested areas to prevent unnecessary tree removal.

(NR7) Routine flying operations and infrequent, temporary (fewer than 30 days) increases in aircraft operations up to 50 percent of the typical FBI aircraft operation rate.

(NR8) Proposed new activities and operations to be conducted in an existing structure that would be consistent with previously established safety levels and would not result in a change in use of the facility. Examples include new types of research, development, testing, and evaluation activities, and laboratory operations conducted within existing enclosed facilities designed to support research and development activities.

(NR9) Conducting audits and surveys; data collection; data analysis; and processing, permitting, information dissemination, review, interpretation, and development of documents. If any of these activities result in proposals for further action, those proposals must be covered by an appropriate CATEX or other NEPA analysis. Examples include:

(i) Document mailings, publication, and distribution, training and information programs, historical and cultural demonstrations, and public affairs actions;

(ii) Studies, reports, proposals, analyses, literature reviews, computer modeling, and intelligence gathering and sharing;

(iii) Activities designed to support improvement or upgrade management of natural resources, such as surveys for threatened and endangered species or cultural resources; wetland delineations; and minimal water, air, waste, and soil sampling;

(iv) Minimally intrusive geological, geophysical, and geo-technical activities, including mapping and engineering surveys;

(v) Conducting facility audits, Environmental Site Assessments, and environmental baseline surveys; and

(vi) Vulnerability, risk, and structural integrity assessments of infrastructure.

(NR10) Routine procurement, use, storage, and disposal of non-hazardous goods and services in support of administrative, operational, or maintenance activities in accordance with executive orders and Federal procurement guidelines. Examples include:

(i) Office supplies and furniture;

(ii) Equipment;

(iii) Mobile assets (*i.e.*, vehicles, vessels, aircraft);

(iv) Utility services; and

(v) Deployable emergency response supplies and equipment.

(NR11) Routine use of hazardous materials (including procurement, transportation, distribution, and storage of such materials) and reuse, recycling, and disposal of solid, medical, radiological, or hazardous waste in a manner that is consistent with all applicable laws, regulations, and policies. Examples include:

(i) Use of chemicals and low-level radionuclides for laboratory applications;

(ii) Refueling of storage tanks;

(iii) Appropriate treatment and disposal of medical waste;

(iv) Temporary storage and disposal of solid waste;

(v) Disposal of radiological waste through manufacturer return and recycling programs; and

(vi) Hazardous waste minimization activities.

(NR12) Acquisition, installation, maintenance, operation, or evaluation of security equipment to screen for or detect dangerous or illegal individuals or materials at existing facilities or to enhance the physical security of existing critical assets. Examples include:

(i) Low-level x-ray devices;

(ii) Cameras and biometric devices;

(iii) Passive inspection devices;

(iv) Detection or security systems for explosive, biological, or chemical substances;

(v) Access controls, screening devices, and traffic management systems;

(vi) Motion detection systems;

(vii) Impact resistant doors and gates;

(viii) Diver and swimmer detection systems, except sonar; and

(ix) Blast and shock impact-resistant systems for land-based and waterfront facilities.

(NR13) Maintenance of facilities, equipment, and grounds. Examples include interior utility work, road maintenance, window washing, lawn mowing, trash collecting, facility cleaning, and snow removal.

(NR14) Recreation and welfare activities (*e.g.*, picnics and Family Day).

(NR15) Training FBI personnel and persons external to the FBI using existing facilities and where the training occurs in accordance with applicable permitting requirements and other requirements for the protection of the environment. This exclusion does not apply to training that involves the use of live chemical, biological, radiological, or explosive agents, except when conducted at a location designed and constructed to accommodate those materials and their associated hazards. Examples include:

(i) Administrative or classroom training;

(ii) Tactical training, including training in explosives and incendiary devices, arson investigation and firefighting, and emergency preparedness and response;

(iii) Chemical, biological, explosive, or hazardous material handling training;

(iv) Vehicle, aircraft, and small boat operation training;

(v) Small arms and less-than-lethal weapons training;

(vi) Security specialties and terrorist response training;

(vii) Crowd control training, including gas range training;

(viii) Enforcement response, self-defense, and interdiction techniques training; and

(ix) Fingerprinting and drug analysis training.

(NR16) Projects, grants, cooperative agreements, contracts, or activities to design, develop, and conduct national, state, local, or international exercises to test the readiness of the nation to prevent or respond to a terrorist attack or a natural or manmade disaster where conducted in accordance with existing facility or land use designations. This exclusion does not apply to exercises that involve the use of live chemical, biological, radiological, nuclear, or explosive agents or devices (other than small devices such as practice grenades or flash bang devices used to simulate an attack during exercises), unless these exercises are conducted under the auspices of existing plans or permits that have undergone NEPA review.

(d) List of REC Required (R) FBI CATEXs

(R1) Reductions, realignments, or relocation of personnel, equipment, or mobile assets that result in changing the use of the space in such a way that could cause changes to environmental effects, but do not result in exceeding the infrastructure capacity outside of FBI-managed property. An example of exceeding the infrastructure capacity would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.

(R2) Acquisition or use of space within an existing structure, by purchase, lease, or use agreement. This includes structures that are in the process of construction or were recently constructed, regardless of whether the existing structure was built to satisfy an FBI requirement and the proposed FBI use would not exceed the carrying capacity of the utilities and infrastructure for the use and access to the space. This also includes associated relocation of personnel, equipment, or assets into the acquired space.

(R3) Transfer of administrative control over real property, including related personal property, between another Federal agency and the FBI that does not result in a change in the functional use of the property.

(R4) New construction (*e.g.*, facilities, roads, parking areas, trails, solar panels, and wind turbines) or improvement of land where all of the following conditions are met:

(i) The site is in a developed or a previously disturbed area;

(ii) The proposed use will not substantially increase the number of motor vehicles at the facility or in the area;

(iii) The construction or improvement will not result in exceeding the infrastructure capacity outside of FBI-managed property (*e.g.*, roads, sewer, water, and parking);

(iv) The site and scale of construction or improvement are consistent with those of existing, adjacent, or nearby buildings; and

(v) The structure and proposed use are compatible with applicable Federal, tribal, state, and local planning and zoning standards and consistent with Federally approved state coastal management programs.

(R5) Renovation, addition, repair, alteration, and demolition projects affecting buildings, roads, airfields, grounds, equipment, and other facilities, including subsequent disposal of debris, which may be contaminated with hazardous materials such as PCBs, lead, or asbestos. Hazardous materials must be disposed of at approved sites in accordance with Federal, state, and local regulations. Examples include the following:

(i) Realigning interior spaces of an existing building;

(ii) Adding a small storage shed to an existing building;

(iii) Retrofitting for energy conservation, including weatherization, installation of timers on hot water heaters, installation of energy efficient lighting, installation of low-flow plumbing fixtures, and installation of drip-irrigation systems;

(iv) Installing a small antenna on an already existing antenna tower that does not cause the total height to exceed 200 feet and where the FCC's NEPA procedures allow for application of a CATEX; or

(v) Closing and demolishing a building not eligible for listing under the National Register of Historic Places.

(R6) Acquisition, installation, reconstruction, repair by replacement, and operation of utility (*e.g.*, water, sewer, electrical), communication (*e.g.*, data processing cable and similar electronic equipment), and security systems that use existing rights-of-way, easements, distribution systems, or facilities.

(R7) Acquisition, installation, operation, and maintenance of permanent equipment, devices, or controls necessary to mitigate effects of FBI's missions on health and the environment. This CATEX is not intended to cover facility construction or related activities. Examples include:

(i) Pollution prevention and pollution-control equipment required to meet applicable Federal, tribal, state, or local requirements;

(ii) Installation of fencing, including security fencing, that would not have the potential to significantly impede wildlife population movement (including migration) or surface water flow;

(iii) Installation and operation of lighting devices;

(iv) Noise-abatement measures, including construction of noise barriers, installation of noise control materials, or planting native trees or native vegetation for use as a noise abatement measure; and

(v) Devices to protect human or animal life, such as raptor electrocution prevention devices, and fencing and grating to prevent accidental entry to hazardous or restricted areas.

(R8) Non-routine procurement, use, storage, and disposal of non-hazardous goods and services in support of administrative, operational, or maintenance activities in accordance with executive orders and Federal procurement guidelines.

(R9) Use of hazardous materials (including procurement, transportation, distribution, and storage of such materials) and reuse, recycling, and disposal of solid, medical, radiological, or hazardous waste in a manner that is consistent with all applicable laws, regulations, and policies, but uncharacteristic of routine FBI use, reuse, recycling, and disposal of hazardous materials and waste. Examples include:

(i) Procurement of a new type of chemical or procurement of a larger quantity of a particular chemical than generally used by FBI; and

(ii) Disposal of items that contain PCBs (*e.g.*, carpets, lighting, caulk).

(R10) Herbicide application and pest management, including registered pesticide application, in accordance with Federal, state, and local regulations.

(R11) Natural resource management activities on FBI-managed property to aid in the maintenance or restoration of native flora and fauna, including site preparation and control of non-indigenous species, excluding the application of herbicides.

6. Environmental Assessment (EA)

An EA is a concise public document for actions that do not meet the requirements for applying a CATEX, but for which it is unclear whether an EIS is required. An EA briefly provides evidence and analysis for determining whether to prepare an EIS or a Finding of No Significant Impact (FONSI), and facilitates preparation of an EIS when one is required. The requirements and contents of an EA are described in 40 CFR 1508.9. Significance of impacts will be determined based on the criteria outlined in 40 CFR 1508.27. The FBI will comment on other agencies' EAs when relevant to the FBI mission, or when the FBI has jurisdiction by law or relevant special expertise.

(a) *Examples of types of FBI actions that typically require an EA include the following:*

(1) Long-term plans for FBI-managed properties and facilities.

(2) Proposed construction, land use, activity, or operation where it is uncertain whether the action will significantly affect environmentally sensitive areas.

(3) New activities for which the impacts are not known with certainty, but where the impacts are not expected to cause significant environmental degradation.

7. Environmental Impact Statement (EIS)

An EIS is a detailed, written statement Federal agencies must prepare for major Federal actions that will significantly affect the quality of the human environment, or when an EA concludes that the significance threshold of the impacts associated with a proposed action would be crossed. An EIS describes effects of the proposed action and any reasonable alternatives. A Notice of Intent (NOI) is published in the **Federal Register** as soon as practicable after a decision to prepare an EIS is made. The FBI may prepare an EIS without prior preparation of an EA. The format and content of an EIS are described in 40 CFR part 1502.

(a) A Record of Decision (ROD) is prepared at the time a decision is made regarding a proposal that is analyzed and documented in an EIS. The ROD will state the decision, discuss the alternatives considered, and state whether all practicable means to avoid or minimize environmental harms have been adopted or, if not, why they were not adopted. Where applicable, the ROD will also describe and adopt a monitoring and enforcement plan for any mitigation. The FBI will comment on other agencies' EISs when relevant to the FBI mission, or where the FBI has jurisdiction by law or relevant special expertise.

(b) *Examples of types of actions that typically require an EIS include the following:*

(1) Proposed major construction or construction of facilities that would have a significant effect on wetlands, coastal zones, or other environmentally sensitive areas.

(2) Change in area, scope, type, or frequency of operations or training that will result in significant environmental effects.

(3) Actions where the effects of a project or operation on the human environment are likely to be highly scientifically uncertain, but are perceived to have potential for significant impacts.

8. Scoping

Scoping may be used for all NEPA documents in order to streamline the NEPA process by identifying significant issues and narrowing the scope of the environmental review process. The FBI may seek agencies with specialized expertise or authority in environmental planning requirements that may be beneficial to FBI mission planning and encourage such agencies to be cooperating agencies (40 CFR 1501.6 and 1508.5). In cases where an EIS is prepared in response to a finding of significant impact following preparation of an EA, the EIS scoping process shall incorporate the results of the EA development process.

9. Public Involvement

The FBI may use such means as newspaper announcements, electronic media, and public hearings to disseminate information to potentially interested or affected parties about NEPA actions, as appropriate. When preparing an EIS, and in certain cases an EA, the FBI will invite comment from affected Federal, tribal, state, and local agencies, and other interested persons in accordance with 40 CFR part 1503.

10. Mitigation

(a) Mitigation measures, such as those described in 40 CFR 1508.20, can be used to offset environmental impacts associated with implementation of an action. If a FONSI or ROD is based on mitigation measures, all mitigation measures stipulated in the EA or EIS must be implemented as described in the FONSI or ROD.

(b) Mitigation measures must be included as conditions in grants, permits, and relevant contract documents. Funding of actions shall be contingent on performance of mitigation measures, where such measures are identified in a FONSI or ROD. If mitigation is required, a mitigation monitoring plan must be developed prior to the initiation of the proposed action. To the extent practicable, the FBI will make available the progress or results of monitoring upon request by the public or cooperating or commenting agencies.

11. Programmatic, Tiered, and Supplemental NEPA Documents

(a) Programmatic EAs or EISs may be prepared to cover broad actions, such as programs or plans (*e.g.*, Master Plan EA).

(b) Tiered EAs or EISs may be prepared to cover narrower actions that are a component to previously prepared Programmatic EAs or EISs as described in 40 CFR 1508.28.

(c) Supplemental EAs or EISs shall be prepared when the FBI makes substantial changes to the proposed action that are relevant to environmental concerns; when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (*e.g.*, new study has revealed rare, threatened, and endangered species in the project vicinity); or when the FBI determines that the purposes of NEPA will be furthered by doing so.

(1) Supplemental EAs may either be prepared by tracking changes in the original EA or by preparing a separate document that only discusses the changes in the project scope or new information and the associated changes with regard to impacts. The process concludes with a decision regarding whether to issue a revised FONSI (using one of the methods listed in section 9) or a decision to prepare an EIS.

(2) Supplemental EISs are prepared in the same way as an EIS. If, however, a supplemental EIS is prepared within one year of filing the ROD for the original EIS, no new scoping process is required. The process concludes with a decision regarding whether to issue a revised ROD.

Dated: April 13, 2016.

Sally Q. Yates,

Deputy Attorney General.

[FR Doc. 2016–11945 Filed 5–23–16; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550, 556, 559, and 560

[Docket ID: BOEM–2016–0031]

RIN 1010–AD06

Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Proposed rule; revision to final rulemaking.

SUMMARY: On March 30, 2016, the Bureau of Ocean Energy Management (BOEM) published in the **Federal Register** a final rule that updates and streamlines the Outer Continental Shelf (OCS) oil and gas and sulfur leasing regulations, which will become effective on May 31, 2016. BOEM wishes to clarify the language in one section of that rule. Therefore, BOEM is proposing to revise that section and give the public an opportunity to comment. The final rule was issued under Docket ID: MMS–2007–OMM–0069, which has expired and is no longer accessible. Therefore, BOEM is utilizing a new Docket ID for this proposed rule (BOEM–2016–0031).

DATES: Submit comments by June 23, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Sebastian, Office of Policy, Regulation and Analysis at (504) 736–2761 or email at *robert.sebastian@boem.gov.*

ADDRESSES: Address all comments regarding this proposed rule to BOEM by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments;
- *U.S. Postal Service or Other Mail Delivery Service:* Address to Robert Sebastian, Office of Policy, Regulation and Analysis (OPRA), BOEM, Department of the Interior, 1849 C Street NW., Mailstop DM5238, Washington, DC 20240; or
- Hand delivery to Office of Policy, Regulation and Analysis, BOEM, Department of the Interior, at 1849 C Street NW., Room No. 5249, Washington, DC 20240.

Please include your name, return address and phone number and/or email address, so we can contact you if we have questions regarding your submission.

Public Availability of Comments: BOEM does not consider anonymous comments; please include your name and address as part of your submittal. Before including your name, address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

SUPPLEMENTARY INFORMATION:

I. Background

On March 30, 2016 BOEM published in the **Federal Register** (81 FR 18111), a final rule that updates and streamlines the Outer Continental Shelf (OCS) oil and gas and sulfur leasing regulations, which will become effective on May 31, 2016. BOEM wishes to clarify the language in one definition in § 556.105 of that rule. Therefore, in this proposed rule, BOEM proposes to make a revision to that section.

II. Analysis

Section 556.105 Definitions

The term "You" was defined in proposed rule § 256.103 by providing a list of categories of persons to whom the term would apply. This list was retained in the definition of "You" in final rule § 556.105, but an introductory sentence was added to clarify that some persons not yet in a legal relationship with BOEM were affected by portions of part 556. The resulting definition, included in the final rule, read as follows: "You means any party that has, or may have, legal obligations to the Federal government with respect to any operations on the OCS in which it is or may become involved. Depending on the context of the regulation, the term "you" may include a lessee (record title owner), an operating rights owner, a designated operator or agent of the lessee, a predecessor lessee, a holder of a State or Federal RUE, or a pipeline ROW holder." The first sentence of that definition, by its reference to operations, may cause confusion as to who is considered to be subject to the regulations in part 556. Therefore, BOEM proposes to change the wording of the definition to remove the introductory sentence and add specific references to: A bidder; a prospective bidder; and an applicant seeking to become an assignee of record title or operating rights. These changes will specify the categories of persons who (depending on the context) must comply with certain sections of part 556, without the ambiguity of the definition as it is stated in the final rule. As amended, the definition would read: "*You,* depending on the context of the regulations, means a bidder, a prospective bidder, a lessee (record title owner), an operating rights owner, an applicant seeking to become an assignee of record title or operating rights, a designated operator or agent of the lessee, a predecessor lessee, a RUE holder for a State or Federal lease, or a pipeline ROW holder."

III. Procedural Requirements

Section V, Legal and Regulatory Analyses, of the final rule issued on March 30, 2016 (81 FR 18145), summarizes BOEM's analyses of the rule pursuant to applicable statutes and executive orders. This proposed amendment to that rule would not change any conclusion described in that section, because the amendment is only intended to clarify the meaning of the regulatory text in the final rule and would not require any additional actions by either BOEM or the regulated community. Therefore, no additional analysis is necessary.

List of Subjects in 30 CFR Part 556

Administrative practice and procedure, Continental shelf, Environmental protection, Federal lands, Government contracts, Intergovernmental relations, Oil and gas exploration, Outer continental shelf, Mineral resources, Reporting and recordkeeping requirements.

Dated: May 16, 2016.

Amanda C. Leiter,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, BOEM proposes to amend 30 CFR part 556 (as amended by the final rule published on March 30, 2016, at 81 FR 18111) as follows:

PART 556—LEASING OF SULFUR OR OIL AND GAS AND BONDING REQUIREMENTS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 556 continues to read as follows:

Authority: 30 U.S.C. 1701 note, 30 U.S.C. 1711, 31 U.S.C. 9701, 42 U.S.C. 6213, 43 U.S.C. 1331 note, 43 U.S.C. 1334, 43 U.S.C. 1801–1802.

■ 2. Amend § 556.105 by revising the definition of "You" to read as follows:

§ 556.105 Acronyms and definitions.

* * * * *

You, depending on the context of the regulations, means a bidder, a prospective bidder, a lessee (record title owner), an operating rights owner, an applicant seeking to become an assignee of record title or operating rights, a designated operator or agent of the lessee, a predecessor lessee, a RUE holder for a State or Federal lease, or a pipeline ROW holder.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0118]

RIN 1625–AA00

Safety Zones, Recurring Marine Events Held in the Coast Guard Sector Long Island Sound Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to add, delete, and modify safety zones for annual marine events in the Coast Guard Sector Long Island Sound Captain of the Port Zone. When enforced, these proposed safety zones would restrict vessels from portions of water areas during certain annually recurring events. The safety zones are intended to expedite public notification and ensure the protection of the maritime public and event participants from the hazards associated with certain maritime events. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 23, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2015–0118 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Chief Petty Officer Ian M. Fallon, U.S. Coast Guard Waterways Management Division Sector Long Island Sound; telephone (203) 468–4565, or email *Ian.M.Fallon@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
AOR	Area of Responsibility

II. Background, Purpose, and Legal Basis

Previously, the Coast Guard promulgated safety zones for most of the events associated with this rule and received no public comments. The most recently promulgated rulemaking was on May 24, 2013 when the Coast Guard published a Final Rule, entitled, "Safety Zones and Special Local Regulations; Recurring Marine Events in Captain of the Port Sector Long Island Sound Zone" in the **Federal Register** (78 FR 31402).

The purpose of this rulemaking is to carry out three related actions: (1) Establishing new necessary safety zones, (2) removing safety zones that are no longer needed, and (3) updating and reorganizing existing regulations for ease of use and reduction of administrative overhead.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish regulatory safety zones.

III. Discussion of Proposed Rule

The Coast Guard proposes to revise section 33 CFR 165.151 "Safety Zones; Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone" by establishing one new permanent safety zone, removing twenty-four existing safety zones, and modifying twenty existing safety zones. By proposing these permanent regulation updates, we are providing the public with an opportunity to comment on these changes. This rulemaking limits the unnecessary burden of continually establishing temporary rules every year for events that occur on an annual basis.

(1) Establishing New Marine Event Regulated Areas

This rule proposes to establish one new permanent marine event safety zone under 33 CFR 165.151. The events listed in the revised 33 CFR 165.151 table are all fireworks displays throughout the Sector Long Island Sound Captain of the Port Zone. The event created by this rule is 5.1 Bridgeport Bluefish May Fireworks. Event location and details are listed below in the text of the regulation. Due to the pyrotechnics detonation and burning debris, a safety zone is needed to protect both spectators and participants from the safety potential hazards. This rule would permanently establish a safety zone that restricts vessel movement around the location of the marine event to reduce the safety risks associated with it.

During the enforcement period of the safety zone, persons and vessels would be prohibited from entering, transiting through, remaining, anchoring, or mooring within the safety zone unless specifically authorized by the COTP or the designated representative. Persons and vessels would be able to request authorization to enter, transit through, remain, anchor, or moor within the safety zone by contacting the COTP Sector Long Island Sound by telephone at (203) 468–4401, or designated representative via VHF radio on channel 16. If authorization to enter, transit through, remain, anchor, or moor within the regulated area is granted, all persons and vessels receiving authorization would be required to comply with the instructions of the COTP or designated representative.

The Coast Guard COTP Sector Long Island Sound or designated representatives would enforce the safety zone. These designated representatives are comprised of commissioned, warrant, and petty officers of the Coast Guard. The Coast Guard may be assisted by other federal, state and local agencies in the enforcement of these safety zones.

(2) Remove Old Safety Zones That Are No Longer Needed

This rulemaking proposes to remove the following twenty-four safety zones from Table 1 to § 165.151: 5.1 Jones Beach Air Show, as the regulation will be moved to 33 CFR 100.100 at the Table to § 100.100. 5.2 Greenport Spring Fireworks, as the event has been discontinued. 7.2 Cancer Center for Kids Fireworks, as the event has not been held since 2011 and the sponsoring organization, The Friends of the Cancer Center for Kids, has confirmed that they do not intend to hold the event again in the foreseeable future. 7.10 City of New Haven Fireworks, as the event has not been held since 2008 and the sponsoring organization, the City of New Haven, has confirmed that they do not intend to hold the event again in the foreseeable future. 7.14 Fund in the Sun Fireworks, as the event has not been held since 2010 and the sponsoring organization, the Shelter Island Yacht Club, has confirmed that they do not intend to hold the event again in the foreseeable future. 7.19 Jones Beach State Park Fireworks, as the regulation will be moved to the 33 CFR 100.100 at the Table to § 100.100. 7.20 Madison Cultural Arts Fireworks, as the event has been discontinued. 7.22 Patchogue Chamber of Commerce Fireworks, as the event has been discontinued. 7.26 Village of Quoque Foundering Anniversary Fireworks, as the event has not been held since 2009 and the sponsoring organization, the Village of Quoque, has confirmed that they do not intend to hold the event again in the foreseeable future. 7.28 Great South Bay Music Festival Fireworks, as the event has been discontinued. 7.31 Clam Shell Foundation Fireworks, as the regulation will be moved to the table to 100.100. 7.32 Town of North Hempstead Bar Beach Fireworks, as the event is not in Sector Long Island Sound's AOR. 7.41 Niantic Bay Fireworks, as the event has been discontinued. 7.43 North Bay Fourth of July Fireworks, as the event has been discontinued. 7.46 Irwin family 4th of July, as the event has been discontinued. 7.47 Westbrook July Celebration, as this is a duplicate entry of 7.3 City of Westbrook, CT July Celebration Fireworks. 8.1 Village of Bellport Fireworks, as this is not a reoccurring event. 8.2 Taste of Italy Fireworks, as this is not a reoccuring event. 8.5 Shelter Island Yacht Club Fireworks, as the event has been discontinued. 9.2 Town of Islip Labor Day Fireworks, as the event has been discontinued. 9.5 Archangel Michael Greek Orthodox Church Fireworks, as the event is not in Sector Long Island Sound's AOR. 9.6 Port Washington Sons of Italy Fireworks, as the event is not in Sector Long Island Sound's AOR. 11.1 Charles W. Morgan Anniversary Fireworks, as the event has been discontinued. 12.1 Greenport Winter Fireworks, as the event has been discontinued.

This rulemaking also proposes to delete all seven of the safety zones from Table 2 to § 165.151: 1.1 Swim Across the Sound, as the regulation will be moved to 33 CFR 100.100 at the Table to § 100.100. 1.2 Huntington Bay Open Water Championships Swim, as the regulation will be moved to 33 CFR 100.100 at the Table to § 100.100. 1.3 Maggie Fischer Memorial Great South Bay Cross Bay Swim, as the regulation will be moved to 33 CFR 100.100 at the Table to § 100.100. 1.4 Waves of Hope Swim, as the regulation will be moved to 33 CFR 100.100 at the Table to § 100.100. 1.5 Stonewall Swim, as the regulation will be moved to 33 CFR 100.100 at the Table to § 100.100. 1.6 Swim Across America Greenwich, as the regulation will be moved to 33 CFR 100.100 at the Table to § 100.100. 1.7 US Coast Guard Triathlon Swim, as this is not a reoccurring event.

(3) Modify and Update Existing Regulated Areas

Due to the deletion of twenty-four cites within Table 1 to § 165.151, several of the remaining cites will be renumbered to fill the vacancies created by the deleted cites. The cite numbers used in this section reflect cite numbers as they are currently listed in Table 1 to § 165.151: 2.1 Sag Harbor COC Winter Harbor Frost Fireworks Date was updated for accuracy. 6.1 Barnum Festival Fireworks Location was updated for accuracy. 6.2 Town of Branford Fireworks Location was updated for accuracy. 6.3 Vietnam Veterans/Town of East Haven Fireworks Location was updated for accuracy. 6.4 Salute to Veterans Fireworks Location was updated for accuracy. 7.1 Point O'Woods Fire Company Summer Fireworks Location was updated for accuracy. 7.7 Southampton Fresh Air Home Fireworks Location was updated for accuracy. 7.9 City of Middletown Fireworks Location was updated for accuracy. 7.11 City of Norwich July Fireworks Location was updated for accuracy. 7.12 City of Stamford Fireworks Date was updated for accuracy. 7.13 City of West Haven Fireworks Date was updated for accuracy. 7.23 Riverfest Fireworks Date was removed due to the fact that the exact date in July would change annually. The public will be notified of the exact date and time annually. The Locations of the safety zones were updated for accuracy. 7.24 Village of Asharoken Fireworks Location was updated for accuracy. 7.25 Village of Port Jefferson Fourth of July Celebration Fireworks Location was updated for accuracy. 7.33 Groton Long Point Yacht Club Fireworks Location was updated for accuracy. 7.42 Connetquot River Summer Fireworks Location was updated for accuracy. 7.44 National Golf Links Fireworks Name is to be changed to Sebonack Golf Club Links Fireworks per the sponsor's request. 8.8 Ascension Fireworks Location was updated for accuracy. 9.1 East Hampton Fire Department Fireworks Location was updated for accuracy. 11.2 Christmas Boat Parade Fireworks barge Locations were updated for accuracy.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

The Coast Guard determined that this proposed rulemaking is not a significant regulatory action for the following reasons: The safety zones are of limited duration and vessels may transit the navigable waterways outside of the safety zones. Persons or vessels requiring entry into the safety zones may be authorized to do so by the COTP Sector Long Island Sound or designated representative.

Advanced public notifications will also be made to local mariners through appropriate means, which may include but is not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rulemaking elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of safety zones. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. To submit your comment online, go to *http://www.regulations.gov,* type the docket number in the "SEARCH" box and click "SEARCH." Click on the comment option on the line associated with this NPRM. As stated in the **ADDRESSES** section, you may also submit your comments by fax, mail, or hand delivery. Please use only one of these four submittal methods.

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you go to the online docket by following instructions in the next paragraph, and sign up for email alerts, you will be notified whenever comments are submitted or a final rule is published.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the "SEARCH" box and click "SEARCH." Click on the Open Docket Folder option on the line associated with this notice of proposed rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316). We allow anonymous submissions.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise table 1 to § 165.151 and remove table 2 to § 165.151.

The revision reads as follows:

§ 165.151 Safety Zones; Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone.

* * * * *

TABLE TO § 165.151

2	February
2.1 Sag Harbor COC Winter Harbor Frost Fireworks	• Date: A day in February determined annually. • Rain Date: A day in February determined annually. • Time (Approximate): 5:30 p.m. to 6:45 p.m. • Location: Waters of Sag Harbor off Long Wharf St. Pier in Sag Harbor, NY in approximate position 41°00′16.82″ N., 072°17′43.78″ W. (NAD 83).
4	April
4.1 Bridgeport Bluefish April Fireworks	• Date: A day in April determined annually. • Rain Date: A day in April determined annually. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of the Pequannock River's Lower Reach surrounding Steel Point in Bridgeport, CT in approximate position 41°10′35″ N., 073°10′58″ W. (NAD 83).
5	May
5.1 Bridgeport Bluefish May Fireworks	• Date: A day in May determined annually. • Rain Date: A day in May determined annually. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of the Pequannock River's Lower Reach surrounding Steel Point in Bridgeport, CT in approximate position 41°10′35″ N., 073°10′58″ W. (NAD 83).
6	June
6.1 Barnum Festival Fireworks	• Date: A day in June determined annually. • Rain Date: A day in June determined annually. • Time (Approximate): 9:30 p.m. to 10:00 p.m. • Location: Waters of Bridgeport Harbor, Bridgeport, CT in approximate position 41°09′34″ N., 073°11′18″ W. (NAD 83).
6.2 Town of Branford Fireworks	• Date: A day during the last two weeks of June. • Rain Date: A day in June determined annually. • Time (Approximate): 9:30 p.m. to 10:00 p.m. • Location: Waters of Branford Harbor, Branford, CT in approximate position, 41°15′37″ N., 072°49′15″ W. (NAD 83).
6.3 Vietnam Veterans/Town of East Haven Fireworks	• Date: A day during the last two weeks of June. • Rain Date: A day in June determined annually. • Time (Approximate): 9:30 p.m. to 10:30 p.m. • Location: Waters off Cosey Beach, East Haven, CT in approximate position, 41°14′31.7″ N., 072°52′16.4″ W. (NAD 83).
6.4 Salute to Veterans Fireworks	• Date: A day during the last week of June. • Rain Date: A day in June determined annually. • Time (Approximate): 9:30 p.m. to 10:00 p.m. • Location: Waters of Reynolds Channel off Hempstead, NY in approximate position 40°35′36.87″ N., 073°35′20.72″ W. (NAD 83).
6.5 Cherry Grove Arts Project Fireworks	• Date: A day during the first two weeks of June. • Time (Approximate): 9:30 p.m. to 10:00 p.m. • Location: Waters of the Great South Bay off Cherry Grove, NY in approximate position 40°39′ 49.06″ N., 073°05′27.99″ W. (NAD 83).
6.6 Bridgeport Bluefish June Fireworks	• Date: A day in June determined annually. • Rain Date: A day in June determined annually. • Time (Approximate): 9:00 p.m. to 10:00 p.m.

TABLE TO § 165.151—Continued

	• Location: Waters of the Pequannock River's Lower Reach surrounding Steel Point in Bridgeport, CT in approximate position 41°10′35″ N., 073°10′ 58″ W. (NAD 83).
7	July
7.1 Point O'Woods Fire Company Summer Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:30 p.m. to 10:00 p.m. • Location: Waters of the Great South Bay, Point O'Woods, NY in approximate position 40°39′27.28″ N., 073°08′20.98″ W. (NAD 83).
7.2 City of Westbrook, CT July Celebration Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:30 p.m. to 10:00 p.m. • Location: Waters of Westbrook Harbor, Westbrook, CT in approximate position, 41°16′10.5″ N., 072°26′14″ W. (NAD 83).
7.3 Norwalk Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters off Calf Pasture Beach, Norwalk, CT in approximate position, 41°04′05″ N., 073°23′22″ W. (NAD 83).
7.4 Lawrence Beach Club Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:30 p.m. to 10:00 p.m. • Location: Waters of the Atlantic Ocean off Lawrence Beach Club, Atlantic Beach, NY in approximate position 40°34′42.65″ N., 073°42′56.02″ W. (NAD 83).
7.5 Sag Harbor Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of Sag Harbor Bay off Havens Beach, Sag Harbor, NY in approximate position 41°00′26″ N., 072°17′09″ W. (NAD 83).
7.6 Southhampton Fresh Air Home Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of Shinnecock Bay, Southampton, NY in approximate positions, 40°51′49.14″ N., 072°26′31.48″ W. (NAD 83).
7.7 Westport Police Athletic league Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters off Compo Beach, Westport, CT in approximate position, 41°06′15″ N., 073°20′57″ W. (NAD 83).
7.8 City of Middletown Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of the Connecticut River, Middletown Harbor, Middletown, CT in approximate position 41°33′47.5″ N., 072°38′38.39″ W. (NAD 83).
7.9 City of Norwich July Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of the Thames River, Norwich, CT in approximate position, 41°31′14.19″ N., 072°04′43.23″ W. (NAD 83).
7.10 City of Stamford Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:30 p.m. to 10:00 p.m. • Location: Waters of Fisher's Westcott cove, Stamford, CT in approximate position 41°02′09.56″ N., 073°30′57.76″ W. (NAD 83).
7.11 City of West Haven Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of New Haven Harbor, off Bradley Point, West Haven, CT in approximate position 41°15′07″ N., 072°57′26″ W. (NAD 83).
7.12 Fairfield Aerial Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of Jennings Beach, Fairfield, CT in approximate position 41°08′22″ N., 073°14′02″ W. (NAD 83).
7.13 Independence Day Celebration Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters off of Umbrella Beach, Montauk, NY in approximate position 41°01′44″ N., 071°57′13″ W. (NAD 83).
7.14 Mason's Island Yacht Club Fireworks	• Date: A day during the first two weeks of July.

TABLE TO § 165.151—Continued

	• Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of Fisher's Island Sound, Noank, CT in approximate position 41°19′30.61″ N., 071°57′48.22″ W. (NAD 83).

7.15 Riverfest Fireworks	• Date: A day in the second or third week of July.
	• Time (Approximate): 9:00 p.m. to 10:30 p.m.
	• Location: Waters of the Connecticut River, Hartford, CT and East Hartford, CT within a 1000 foot radius of the launch platforms in approximate positions:
	  • Barge 1: 41°45′41.94″ N., 072°39′50.74″ W. (NAD 83).
	  • Barge 2: 41°45′40.01″ N., 072°39′49.63″ W. (NAD 83).
	  • Barge 3: 41°45′38.30″ N., 072°39′48.19″ W. (NAD 83).
	  • Barge 4: 41°45′40.28″ N., 072°39′48.95″ W. (NAD 83).

7.16 Village of Asharoken Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 8:30 p.m. to 10:00 p.m. • Location: Waters of Northport Bay, Asharoken, NY in approximate position, 41°56′21.2″ N., 073°21′15.14″ W. (NAD 83).
7.17 Village of Port Jefferson Fourth of July Celebration Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of Port Jefferson Harbor Port Jefferson, NY in approximate position 40°57′53.19″ N., 073°03′09.72″ W. (NAD 83).
7.18 City of Long Beach Fireworks	• Date: A day in the second or third week of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters off Riverside Blvd, City of Long Beach, NY in approximate position 40°34′38.77″ N., 073°39′41.32″ W. (NAD 83).
7.19 Mashantucket Pequot Fireworks	• Date: A day in the second or third week of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of the Thames River New London, CT in approximate position 41°21′03.03″ N., 072°5′24.5″ W.
7.20 Shelter Island Fireworks	• Date: A day in the second or third week of July. • Time (Approximate): 9:30 p.m. to 10:30 p.m. • Location: Waters of Gardiner Bay, Shelter Island, NY in approximate position 41°04′39.11″ N., 072°22′01.07″ W. (NAD 83).
7.21 Groton Long Point Yacht Club Fireworks	• Date: A day in the second or third week of July. • Time (Approximate): 9:30 p.m. to 10:00 p.m. • Location: Waters of Long Island Sound, Groton, CT in approximate position 41°18′37″ N., 072°00′56″ W. (NAD 83).
7.22 Devon Yacht Club Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of Napeague Bay, in Block Island Sound off Amagansett, NY in approximate position 40°59′41.4″ N., 072°06′08.70″ W. (NAD 83).
7.23 Friar's Head Golf Club Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of Long Island Sound off Baiting Hollow, NY in approximate position, 40°58′19.53″ N., 072°43′45.65″ W. (NAD 83).
7.24 Islip Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:30 p.m. to 10:00 p.m. • Location: Waters of the Great South Bay off Bay Shore Manor Park, Islip, NY in approximate position 40°42′24″ N., 073°14′24″ W. (NAD 83).
7.25 Madison Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:30 p.m. to 10:00 p.m. • Location: Waters of Long Island Sound off Madison Beach, Madison, CT in approximate position 41°16′03.93″ N., 072°36′15.97″ W. (NAD 83).
7.26 Stratford Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of Long Island Sound surrounding Short Beach Park, Stratford, CT in approximate position 41°09′50.82″ N., 073°06′47.13″ W. (NAD 83).
7.27 Rowayton Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:30 p.m. to 10:00 p.m.

TABLE TO § 165.151—Continued

	• Location: Waters of Long Island Sound south of Bayley Beach Park in Rowayton, CT in approximate position 41°03′11″ N., 073°26′41″ W. (NAD 83).
7.28 Connetquot River Summer Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:30 p.m. to 10:30 p.m. • Location: Waters of the Connetquot River off Snapper Inn Restaurant, Oakdale, NY in approximate position 40°43′30.03″ N., 073°08′40.25″ W. (NAD 83).
7.29 Sebonack Golf Club Links Fireworks	• Date: A day during the first two weeks of July. • Time (Approximate): 9:30 p.m. to 10:00 p.m. • Location: Waters of the Great Peconic Bay, approximately 3/4 of a mile northwest of Bullhead Bay, Shinnecock, NY in approximate position 40°55′11.79″ N., 072°28′04.34″ W. (NAD 83).
7.30 Bridgeport Bluefish July Fireworks	• Date: A day in July determined annually. • Rain Date: A day in July determined annually. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of the Pequannock River's Lower Reach surrounding Steel Point in Bridgeport, CT in approximate position 41°10′35″ N., 073°10′58″ W. (NAD 83).
8	August
8.1 Old Black Point Beach Association Fireworks	• Date: A day in August determined annually. • Time (Approximate): 8:00 p.m. to 11:00 p.m. • Location: Waters off Old Black Point Beach East Lyme, CT in approximate position, 41°17′34.9″ N., 072°12′55″ W. (NAD 83).
8.2 Town of Babylon Fireworks	• Date: A day in August determined annually. • Time (Approximate): 8:30 p.m. to 10:00 p.m. • Location: Waters off of Cedar Beach Town Park, Babylon, NY in approximate position 40°37′53″ N., 073°20′12″ W. (NAD 83).
8.3 Stamford Fireworks	• Date: A day between the last week of August and the first week of September. • Rain date: The last Sunday of August. • Time (Approximate): 8:00 p.m. to 9:30 p.m. • Location: Waters of Stamford Harbor, off Kosciuszco Park, Stamford, CT in approximate position 41°01′48.46″ N., 073°32′15.32″ W. (NAD 83).
8.4 Ascension Fireworks	• Date: A day during the third or fourth weekend of August. • Time (Approximate): 8:30 p.m. to 10:30 p.m. • Location: Waters of the Great South Bay off The Pines, East Fire Island, NY in approximate position 40°40′10″ N., 073°04′12″ W. (NAD 83).
8.5 Bridgeport Bluefish August Fireworks	• Date: A day in August determined annually. • Rain Date: A day in August determined annually. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of the Pequannock River's Lower Reach surrounding Steel Point in Bridgeport, CT in approximate position 41°10′35″ N., 073°10′58″ W. (NAD 83).
9	September
9.1 East Hampton Fire Department Fireworks	• Date: A day between the last week of August and the first week of September • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters off Main Beach, East Hampton, NY in approximate position 40°56′42″ N., 072°11′22″ W. (NAD 83).
9.2 Village of Island Park Labor Day Celebration Fireworks	• Date: A day between the last week of August and the first week of September • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters off Village of Island Park Fishing Pier, Village Beach, NY in approximate position 40°36′30.95″ N., 073°39′22.23″ W. (NAD 83).
9.3 The Creek Fireworks	• Date: A day between the last week of August and the first week of September. • Time (Approximate): 8:00 p.m. to 9:00 p.m.

TABLE TO § 165.151—Continued

	• Location: Waters of Long Island Sound off the Creek Golf Course, Lattingtown, NY in approximate position 40°54′13″ N., 073°35′58″ W. (NAD 83).
9.4 Bridgeport Bluefish September Fireworks	• Date: A day in September determined annually. • Rain Date: A day in September determined annually. • Time (Approximate): 9:00 p.m. to 10:00 p.m. • Location: Waters of the Pequannock River's Lower Reach surrounding Steel Point in Bridgeport, CT in approximate position 41°10′35″ N., 073°10′58″ W. (NAD 83).
11	November

11.1 Christmas Boat Parade Fireworks	• Date: A day during the third or fourth weekend in November.
	• Time (Approximate): 5:30 p.m. to 6:30 p.m.
	• Location: Waters of Patchogue Bay off "Lombardi's on the Bay" restaurant Patchogue, NY in approximate positions:
	  • Barge 1: 41°45′25.78″ N., 073°01′06.5″ W. (NAD 83).
	  • Barge 2: 41°45′12.88″ N., 073°01′04.2″ W. (NAD 83).
	  • Barge 3: 41°44′58.18″ N., 073°01′2.66″ W. (NAD 83).

11.2 Connetquot River Fall Fireworks	• Date: A day during the last weekend of November. • Time (Approximate): 7:00 p.m. to 7:30 p.m. • Location: Waters of the Connetquot River off Snapper Inn Restaurant, Oakdale, NY in approximate position 40°43′32.38″ N., 073°09′02.64″ W. (NAD 83).

Dated: April 19, 2016.

E.J. Cubanski, III,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2016–12001 Filed 5–23–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0361; FRL–9946–81–Region 4]

Air Plan Approval; Florida; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Florida through the Florida Department of Environmental Protection (FDEP) on March 10, 2015. Florida's March 10, 2015, SIP revision (Progress Report) addresses requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of a state's existing SIP addressing regional haze (regional haze plan). EPA is proposing to approve Florida's Progress Report on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period for regional haze.

DATES: Comments must be received on or before June 23, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0361 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached by phone at (404) 562–9043 and via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the Regional Haze Rule,[1] each state is required to submit a progress report in the form of a SIP revision every five years that evaluates progress towards the RPGs for each mandatory Class I Federal area (also referred to as Class I area in this rulemaking) within the state and for each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). Each state is also required to submit, at the same time as the progress report, a determination of the adequacy of the state's existing regional haze plan. *See* 40 CFR 51.308(h). The first progress report is due five years after submittal of the initial regional haze plan. On March 19, 2010, FDEP submitted the State's first regional haze plan in accordance with 40 CFR 51.308(b).[2]

On March 10, 2015, FDEP submitted its regional haze progress report, reporting progress made in the first implementation period towards RPGs for Class I areas in the State and for Class I areas outside the State that are affected by emissions from sources within Florida. This submittal also includes a negative declaration pursuant to 40 CFR 51.308(h)(1) that the State's regional haze plan requires no substantive revision to achieve the established regional haze visibility improvement goals for 2018. EPA is proposing to approve Florida's progress report on the basis that it satisfies the requirements of 40 CFR 51.308(g) and 51.308(h).

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[1] 40 CFR part 51, subpart P.

[2] On August 29, 2013, EPA fully approved Florida's regional haze plan (as amended on August 31, 2010, and September 17, 2012). See 78 FR 53250.

II. What are the requirements for the regional haze progress report and adequacy determinations?

A. Regional Haze Progress Report

Under 40 CFR 51.308(g), states must submit a regional haze progress report as a SIP revision every five years and must address, at a minimum, the seven elements found in 40 CFR 51.308(g). As described in further detail in section III below, 40 CFR 51.308(g) requires: (1) A description of the status of measures in the approved regional haze plan; (2) a summary of emissions reductions achieved; (3) an assessment of visibility conditions for each Class I area in the state; (4) an analysis of changes in emissions from sources and activities within the state; (5) an assessment of any significant changes in anthropogenic emissions within or outside the state that have limited or impeded progress in Class I areas impacted by the state's sources; (6) an assessment of the sufficiency of the approved regional haze plan; and (7) a review of the state's visibility monitoring strategy.

B. Adequacy Determinations of the Current Regional Haze Plan

Under 40 CFR 51.308(h), states are required to submit, at the same time as the progress report, a determination of the adequacy of their existing regional haze plan and to take one of four possible actions based on information in the progress report. As described in further detail in section III below, 40 CFR 51.308(h) requires states to: (1) Submit a negative declaration to EPA that no further substantive revision to the state's existing regional haze plan is needed; (2) provide notification to EPA (and to other state(s) that participated in the regional planning process) if the state determines that its existing regional haze plan is or may be inadequate to ensure reasonable progress at one or more Class I areas due to emissions from sources in other state(s) that participated in the regional planning process, and collaborate with these other state(s) to develop additional strategies to address deficiencies; (3) provide notification with supporting information to EPA if the state determines that its existing regional haze plan is or may be inadequate to ensure reasonable progress at one or more Class I areas due to emissions from sources in another country; or (4) revise its regional haze plan to address deficiencies within one year if the state determines that its existing regional haze plan is or may be inadequate to ensure reasonable progress in one or more Class I areas due to emissions from sources within the state.

III. What is EPA's analysis of Florida's regional haze progress report and adequacy determination?

On March 10, 2015, FDEP submitted a revision to Florida's regional haze plan to address progress made towards the RPGs for Class I areas in the State and for Class I areas outside the State that are affected by emissions from sources within Florida. This submittal also includes a determination of the adequacy of the State's existing regional haze plan. Florida has three mandatory Class I areas within its borders: Everglades National Park, Chassahowitzka Wilderness Area, and St. Marks Wilderness Area. In Florida's regional haze plan, the State also determined that emissions sources located in Florida may have significant sulfate visibility impacts on the following Class I areas in neighboring states: Okefenokee Wilderness Area and Wolf Island Wilderness Area in Georgia, and Breton Wilderness Area in Louisiana.

A. Regional Haze Progress Report

The following sections summarize: (1) Each of the seven elements that must be addressed by a progress report under 40 CFR 51.308(g); (2) how Florida's Progress Report addressed each element; and (3) EPA's analysis and proposed determination as to whether the State satisfied each element.

1. Status of Control Measures

40 CFR 51.308(g)(1) requires a description of the status of implementation of all measures included in the regional haze plan for achieving RPGs for Class I areas both within and outside the state.

The State evaluated the status of all measures included in its regional haze plan in accordance with 40 CFR 51.308(g)(1). Specifically, in its Progress Report, Florida summarizes the status of the emissions reduction measures that were included in the final iteration of the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) regional haze emissions inventory and RPG modeling used by the State in developing its regional haze plan. These measures include, among other things, applicable federal programs (*e.g.,* mobile source rules, Maximum Achievable Control Technology (MACT) standards), federal and state consent agreements, and federal and state control strategies for electric generating units (EGUs). The State also addresses the status of Best Available Retrofit Technology (BART) and reasonable progress controls included in the regional haze plan and discusses the status of several measures that were not included in the final VISTAS emissions inventory and were not relied upon in the initial regional haze plan to meet RPGs. The State notes that the emissions reductions from these recent measures will help ensure Class I areas impacted by Florida sources achieve their RPGs. In aggregate, as noted in sections III.A.2 and III.A.6 of this notice, the emissions reductions from the identified measures are expected to exceed the emissions projections in Florida's regional haze plan.

In its regional haze plan, Florida identified sulfur dioxide (SO_2) emissions from coal-fired EGUs as a key contributor to regional haze in the VISTAS region, with the EGU sector as a major contributor to visibility impairment at all Class I areas in the VISTAS region. The State's Progress Report provides additional information on EGU control strategies and the status of existing and future expected controls for EGUs in Florida, with updated actual SO_2 emissions data for the years 2007–2013.

EPA proposes to find that Florida's analysis adequately addresses 40 CFR 51.308(g)(1). The State documents the implementation status of measures from its regional haze plan in addition to describing additional measures not originally accounted for in the final VISTAS emissions inventory that came into effect since the VISTAS analyses for the regional haze plan were completed.

2. Emissions Reductions and Progress

40 CFR 51.308(g)(2) requires a summary of the emissions reductions achieved in the state through implementing measures described in 40 CFR 51.308(g)(1).

In its Progress Report, Florida evaluated the emissions reductions associated with the implementation of many measures identified in its regional haze plan, including the emissions reductions associated with sources subject to BART or reasonable progress control determinations. As described below, Florida included nitrogen oxides (NO_X) and SO_2 emissions data for EGUs in Florida from 2002–2013 and annual SO_2 emissions data from point sources in the State from 2000–2013. In its regional haze plan, Florida states that ammonium sulfate is the largest contributor to visibility impairment in Class I areas throughout the southeastern United States during the baseline period from 2000–2004. Emissions sensitivity modeling performed by VISTAS determined that the most effective ways to reduce ammonium sulfate were to reduce SO_2 emissions from coal-fired EGUs and, with an important but smaller impact, to reduce SO_2 emissions from non-utility industrial point sources. SO_2 reductions from point sources were therefore identified as the focus of Florida's long-term strategy for visibility improvement. In its Progress Report, Florida examined pollutants affecting visibility in Class I areas in Florida to ascertain whether it is still appropriate to focus on SO_2 emissions to improve visibility in Class I areas impacted by sources in Florida. Using updated data for the 2006–2010 time period, the State concludes that ammonium sulfate continues to be the largest contributor to visibility impairment in these areas.

The data from EPA's Clean Air Markets Division included in the Progress Report for Acid Rain Program units from 2002–2013 show that SO_2 emissions from EGUs in Florida and in the VISTAS region have declined during this time period even though heat input to these units remains fairly steady. *See* Figure 4–2 in Florida's submittal. Between 2002 and 2013, heat input to these units decreased from approximately 1,597,000,000 (million British Thermal Units) MMBtu to 1,548,000,000 MMBtu, a decrease of three percent. SO_2 emissions from these units decreased from 466,904 tons annually in 2002 to 88,004 tons annually in 2013, a decrease of 81.2 percent, and the average SO_2 emission rate from these units decreased from 0.603 pounds per MMBtu (lbs/MMBtu) in 2002 to 0.114 lbs/MMBtu in 2013, a decrease of 81.1 percent. Over the same time period, NO_X emissions from these units decreased from 258,378 tons in 2002 to 54,398 tons in 2013, a decrease of 78.9 percent. Florida states that the SO_2 and NO_X emissions reductions are due to the installation of controls and the use of cleaner burning fuels. Florida also identifies the shut-down of eight BART sources and three reasonable progress sources.

Florida's Progress Report also includes SO_2 and NO_X emissions and heat input trends for Acid Rain Program units in the VISTAS region. *See* Figure 4–3 in Florida's submittal. Between 2002 and 2011, heat input to these units decreased from 7,645,295,464 MMBtu to 7,336,055,333 MMBtu, a decrease of four percent. SO_2 emissions from these units decreased from 3,713,262 tons annually in 2002 to 1,166,572 tons annually in 2011, a decrease of 69.9 percent, and the average SO_2 emission rate from these units decreased from 0.971 lbs/MMBtu in 2002 to 0.318 lbs/MMBtu in 2011, a decrease of 67.3 percent. Over the same time period, NO_X emissions decreased from 1,498,143 tons in 2002 to 464,129 tons in 2011, a decrease of 69 percent.

Between 2009 and 2011, the total VISTAS states' heat input for Acid Rain Program units increased from 6,966,765,915 MMBtu to 7,336,055,333 MMBtu. However, emissions from these units declined from 1,619,348 tons of SO_2 in 2009 to 1,166,572 tons of SO_2 in 2011, and the emission rates of SO_2 decreased from 0.465 lbs/MMBtu to 0.318 lbs/MMBtu.

Florida believes that the reductions in SO_2 and NO_X described above are a result of many factors, including permanent changes at EGUs through the use of control technology and fuel switching. In Florida and the VISTAS region, Florida concluded that these emissions reductions have been achieved even though heat input to these units remains fairly steady. Thus, the State believes that the visibility improvements from the reductions in SO_2 and NO_X should continue into the future even though demand for power and heat input to these units may have moderate increases.

EPA proposes to conclude that Florida has adequately addressed 40 CFR 51.308(g)(2). As discussed above, the State provides emissions reduction estimates, and where available, actual emissions reductions of visibility-impairing pollutants resulting from the measures relied upon in its regional haze plan. The State appropriately focused on SO_2 emissions from EGUs in its Progress Report because the State had previously identified these emissions as the most significant contributors to visibility impairment at Florida's Class I areas and those Class I areas that Florida sources impact.

3. Visibility Progress

40 CFR 51.308(g)(3) requires that states with Class I areas provide the following information for the most impaired and least impaired days for each area, with values expressed in terms of five-year averages of these annual values:[3]

(i) Current visibility conditions;

(ii) the difference between current visibility conditions and baseline visibility conditions; and

(iii) the change in visibility impairment over the past five years.

The State provides figures with the latest supporting data available at the time of plan development that address the three requirements of 40 CFR 51.308(g)(3) for Class I areas in Florida. Table 1, below, shows the current visibility conditions and the difference between current visibility conditions and baseline visibility conditions. Florida reported current conditions as the 2009–2013 five-year period and used the 2000–2004 baseline period for its Class I areas.[4]

TABLE 1—BASELINE VISIBILITY, CURRENT VISIBILITY, AND VISIBILITY CHANGES IN CLASS I AREAS IN FLORIDA

Class I area	Baseline average (2000–2004)	Current average (2009–2013)	Change (current–baseline)
20% Worst Days:			
Chassahowitzka	25.75	21.33	−4.42
Everglades	22.30	18.14	−4.16
St. Marks	26.31	22.22	−4.09
20% Best Days:			

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[3] The "most impaired days" and "least impaired days" in the Regional Haze Rule refers to the average visibility impairment (measured in deciviews) for the twenty percent of monitored days in a calendar year with the highest and lowest amount of visibility impairment, respectively, averaged over a five-year period. 40 CFR 51.301.

[4] For the first regional haze plan, "baseline" conditions were represented by the 2000–2004 time period. *See* 64 FR 35730 (July 1, 1999).

TABLE 1—BASELINE VISIBILITY, CURRENT VISIBILITY, AND VISIBILITY CHANGES IN CLASS I AREAS IN FLORIDA—Continued

Class I area	Baseline average (2000–2004)	Current average (2009–2013)	Change (current–baseline)
Chassahowitzka	15.51	13.74	−1.77
Everglades	11.69	11.21	−0.48
St. Marks	14.37	13.33	−1.04

The data summarized above shows that all Class I areas in the State saw an improvement in visibility (*i.e.*, reduced impairment) on the 20 percent worst days and on the 20 percent best days. For the 20 percent worst days, the current observed five-year average values for all three areas are below the 2013 glide path values and the corresponding 2018 RPG. *See* Table 3–1 in Florida's submittal. For the 20 percent best days, the current observed five-year average values for all three areas are below baseline visibility conditions. Florida's submittal also includes the change in visibility impairment for the 20 percent worst and 20 percent best days from the 2001–2005 time period through the 2009–2013 time period in five-year average increments. *See* Table 3–2 of Florida's submittal. The data also shows that all three Class I areas saw an improvement in visibility on the 20 percent worst days and on the 20 percent best days.

EPA proposes to conclude that Florida has adequately addressed 40 CFR 51.308(g)(3) because the State provides the information regarding visibility conditions and visibility changes necessary to meet the requirements of the regulation. The Progress Report includes current conditions based on the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring data for the years 2009–2013, the difference between current visibility conditions and baseline visibility conditions, and the change in visibility impairment over the most recent five-year period for which data were available at the time of Progress Report development (*i.e.*, 2009–2013).

4. Emission Tracking

40 CFR 51.308(g)(4) requires an analysis tracking emissions changes of visibility-impairing pollutants from the state's sources by type or category over the past five years based on the most recent updated emissions inventory.

In its Progress Report, Florida includes an analysis tracking the change over a five-year period in emissions of pollutants contributing to visibility impairment from the following source categories: point, area, non-road mobile, and on-road mobile. The State evaluated emissions trends in SO_2, NO_X, and fine particulate matter ($PM_{2.5}$) with a focus on SO_2 because, as noted above, Florida concludes that ammonium sulfate continues to be the largest contributor to visibility impairment in Class I areas in Florida.

In its evaluation of NO_X, $PM_{2.5}$, and SO_2 emissions trends, Florida used the 2002 actual and 2009 and 2018 projected inventories from its regional haze plan as well as the Southeastern Modeling, Analysis, and Planning Project (SEMAP) 2007 actual emissions inventory, the 2011 National Emissions Inventory (NEI) actual emissions inventory, and the State's Annual Operation Report point source data collected each year. *See* Tables 4–1 through 4–3 in Florida's submittal. For NO_X emissions, there were large decreases in point and area emissions and some increases in on-road mobile emissions in 2007. The State asserts that the decreases in point source NO_X were due to emissions controls that were installed and that the decrease in area source NO_X is primarily due to the removal of coal and wood combustion boilers from the area source inventory to avoid double counting with the point source category. Florida also believes that the increase in on-road mobile NO_X is due to the use of the MOVES2010a model, rather than MOBILE6.2, for the 2007 inventory. If a consistent on-road model had been used for 2002, 2007, and 2009, the SEMAP 2007 NO_X emissions would have been lower than the VISTAS 2002 actual and VISTAS 2009 projected emissions. However, NO_X emissions have continued to decline between 2002 and 2011 by over 370,000 tons. Regarding $PM_{2.5}$, the 2007 SEMAP and 2011 NEI $PM_{2.5}$ emissions are different from the VISTAS emissions due to methodology changes to reflect up-to-date emission calculations. For example, Florida believes that the increase in on-road mobile $PM_{2.5}$ is due to the switch in model used. Regardless, overall $PM_{2.5}$ emissions have decreased slightly between 2002 and 2011. Regarding SO_2, the inventory analysis shows that overall emissions have decreased significantly from 2002 to 2011, with point source reductions dominating. Florida's Progress Report also evaluates the trend from 2000 through 2013 in SO_2 point source emissions, demonstrating a decrease of over 480,000 tons during this time period. *See* Figure 4–1 in Florida's submittal.

Also, as discussed in section III.A.2. of this notice, the Progress Report documents reductions in NO_X and SO_2 emissions that occurred between 2002–2013 at EGUs in Florida. The State believes that these reductions are a result of permanent changes at EGUs in the State through the use of control technology, fuel switching, and the shut-down of eight BART sources and three reasonable progress sources.

EPA proposes to conclude that Florida has adequately addressed 40 CFR 51.308(g)(4). Florida tracked changes in emissions of visibility-impairing pollutants from 2002–2011 for all source categories and analyzed trends in SO_2 and NO_X emissions from EGUs in the State from 2002–2013, the most current quality-assured data available for these units at the time of progress report development. While ideally the five-year period to be analyzed for emissions inventory changes is the time period since the current regional haze plan was submitted, there is an inevitable time lag in developing and reporting complete emissions inventories once quality-assured emissions data becomes available. Therefore, EPA believes that there is some flexibility in the five-year time period that states can select.

5. Assessment of Changes Impeding Visibility Progress

40 CFR 51.308(g)(5) requires an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred over the past five years that have limited or impeded progress in reducing pollutant emissions and improving visibility in Class I areas impacted by the state's sources.

The Progress Report demonstrates that there are no significant changes in emissions of SO_2, PM, or NO_X that have impeded progress in reducing emissions and improving visibility in Class I areas impacted by Florida sources. As discussed above, Florida documents that sulfates continue to be the biggest single contributor to regional haze in Class I areas in the State and focused its analysis on addressing large SO_2 emissions from point sources. In addressing the requirements of 40 CFR 51.308(g)(5), Florida references its analysis showing that SO_2 emissions from stationary point sources have decreased significantly from 2002 to 2013 and are well below the projections for these sources made in Florida's regional haze plan. Regarding EGUs, the State documented significant decreases in SO_2 emissions despite the fact that power generation has remained fairly constant during the same period. Furthermore, the Progress Report shows that the State is on track to meeting its 2018 RPGs for Class I areas in Florida. For these reasons, EPA proposed to conclude that Florida's Progress Report has adequately addressed 40 CFR 51.308(g)(5).

6. Assessment of Current Strategy

40 CFR 51.308(g)(6) requires an assessment of whether the current regional haze plan is sufficient to enable the state, or other states, to meet the RPGs for Class I areas affected by emissions from the state.

In its Progress Report, Florida states its belief that the elements and strategies outlined in its regional haze plan are sufficient for Class I areas impacted by emissions sources in Florida to meet their RPGs. To support this conclusion, Florida notes the following: Speciated data collected for the period 2006–2010 shows that sulfates continue to be the most significant contributor to visibility impairment, supporting SO_2 reduction as the appropriate control strategy; the SO_2 controls in the State's regional haze plan have been implemented; a 71 percent reduction in the overall SO_2 emissions inventory from 2002 through 2011 verifies that Florida's SO_2 reduction program is achieving the reductions that were projected in the regional haze plan; current visibility impairment values for the 20 percent worst days are lower than the 2018 RPGs and lower than the 2013 glide path values for the Class I areas in Florida; current visibility impairment values for the 20 percent best days are below baseline visibility conditions for all Class I areas in Florida; and visibility data through 2010 show that the 2010 five-year average visibility impairment on the 20 percent worst days in the three Class I areas outside of the State impacted by emissions sources in Florida is at or below the glide path.

EPA proposes to conclude that Florida has adequately addressed 40 CFR 51.308(g)(6). EPA views this requirement as a qualitative assessment that should evaluate emissions and visibility trends and other readily available information, including expected emissions reductions associated with measures with compliance dates that have not yet become effective. The State referenced the improving visibility trends and the downward emissions trends in the State, with a focus on SO_2 emissions from Florida EGUs. These trends support the State's determination that the State's regional haze plan is sufficient to meet RPGs for Class I areas within and outside the State impacted by Florida sources.

7. Review of Current Monitoring Strategy

40 CFR 51.308(g)(7) requires a review of the state's visibility monitoring strategy and an assessment of whether any modifications to the monitoring strategy are necessary.

In its Progress Report, Florida summarizes the existing visibility monitoring network in Class I areas in Florida and notes that the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network is the primary monitoring network for regional haze. There is currently one IMPROVE site in each Florida Class I area (SAMA1, CHAS1, and EVER1) operated by the responsible Federal Land Manager. Florida intends to continue to rely on the IMPROVE network for complying with regional haze monitoring requirements and on the Visibility Information and Exchange Web System (VIEWS) to access IMPROVE data and data analysis tools. Florida concludes that the existing network is adequate and that no modifications to the State's visibility monitoring strategy are necessary at this time.

EPA proposes to conclude that Florida has adequately addressed the sufficiency of its monitoring strategy as required by 40 CFR 51.308(g)(7). The State reaffirmed its continued reliance upon the IMPROVE monitoring network, explained the importance of the IMPROVE monitoring network for tracking visibility trends in Class I areas in Florida, and determined that no changes to its visibility monitoring strategy are necessary.

B. Determination of Adequacy of Existing Regional Haze Plan

Under 40 CFR 51.308(h), states are required to take one of four possible actions based on the information gathered and conclusions made in the progress report. The following section summarizes: (1) The action taken by Florida under 40 CFR 51.308(h); (2) Florida's rationale for the selected action; and (3) EPA's analysis and proposed determination regarding the State's action.

In its Progress Report, Florida took the action provided for by 40 CFR 51.308(h)(1), which allows a state to submit a negative declaration to EPA if the state determines that the existing regional haze plan requires no further substantive revision at this time to achieve the RPGs for Class I areas affected by the state's sources. The State's negative declaration is based on its findings in the Progress Report. EPA proposes to conclude that Florida has adequately addressed 40 CFR 51.308(h) because the visibility trends at the Class I areas impacted by the State's sources and the emissions trends of the State's largest emitters of visibility-impairing pollutants indicate that the RPGs for Class I areas impacted by sources in Florida will be met or exceeded.

IV. What action is EPA proposing to take?

EPA is proposing to approve Florida's Regional Haze Progress Report, SIP revision, submitted by the State on March 10, 2015, as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and 51.308(h).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 12, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–12113 Filed 5–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0751; FRL–9946–83–Region 4]

Air Plan Approval/Disapproval; Mississippi Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve in part, and disapprove in part, portions of the State Implementation Plan (SIP) submission, submitted by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ) on February 28, 2013, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour nitrogen dioxide (NO_2) national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an "infrastructure" SIP. MDEQ certified that the Mississippi SIP contains provisions that ensure the 2010 NO_2 NAAQS are implemented, enforced, and maintained in Mississippi. With the exception of the state board majority requirements respecting significant portion of income, for which EPA is proposing to disapprove, EPA is proposing to determine that portions of Mississippi's infrastructure submission, submitted to EPA on February 28, 2013, satisfies certain required infrastructure elements for the 2010 1-hour NO_2 NAAQS.

DATES: Written comments must be received on or before June 23, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0751 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8726. Mr. Wong can be reached via electronic mail at *wong.richard@epa.gov.*

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I. Background

On February 9, 2010, EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 NO_2 NAAQS to EPA no later than January 22, 2013.[1]

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[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-

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This action is proposing to approve Mississippi's infrastructure SIP submission for the applicable requirements of the 2010 1-hour NO_2 NAAQS, with the exception of the preconstruction PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of (D)(i) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), and the state board majority requirements respecting significant portion of income of 110(a)(2)(E)(ii). On March 18, 2015, EPA approved Mississippi's February 28, 2013, infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i) and (J) for the 2010 1-hour NO_2 NAAQS. *See* 80 FR 14019. Therefore, EPA is not proposing any action in this document pertaining to sections 110(a)(2)(C), prong 3 of D(i) and (J). Additionally, with respect to the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), EPA is not proposing any action in this document on these requirements. With respect to Mississippi's infrastructure SIP submission related to the majority requirements respecting significant portion of income of 110(a)(2)(E)(ii), EPA is proposing to disapprove this portion of Mississippi's submission because Mississippi does not preclude at least a majority of the members of its boards from receiving a significant portion of their income from persons subject to permits or enforcement orders issued by such boards. For the aspects of Mississippi's submittal proposed for approval, EPA notes that the Agency is not approving any specific rule, but rather proposing that Mississippi's already approved SIP meets certain CAA requirements.

II. What elements are required under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2010 NO_2 NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned previously, these requirements include basic SIP elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are summarized later in this preamble and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."[2]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[3]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[4]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting Fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from Mississippi that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 NO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of

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approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term "Air Pollution Control (APC)" or "Section APC–S–X" indicates that the cited regulation has been approved into Mississippi's federally-approved SIP. The term "Mississippi Code" indicates cited Mississippi state statutes, which are not a part of the SIP unless otherwise indicated.

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] As mentioned, this element is not relevant to this proposed rulemaking.

CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[6] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[8] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[9]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[10]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

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[5] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[6] *See, e.g.,* "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[8] *See, e.g.,* "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[9] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[11] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.*, whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 fine particulate matter ($PM_{2.5}$) NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, among other things, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[14] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

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[11] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[12] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[13] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

[14] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II). Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

IV. What is EPA's analysis of how Mississippi addressed the elements of Sections 110(a)(1) and (2) "infrastructure" provisions?

Mississippi's February 28, 2013, infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described later on.

1. 110(a)(2)(A) *Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Mississippi's infrastructure SIP submission provides an overview of the provisions of the Mississippi Air Pollution Control (APC) regulations relevant to air quality control. *Mississippi Code Title* 49, Section 49–17–17(h) (Appendix A–9),[18] authorizes MDEQ to adopt, modify, or repeal ambient air quality standards and emissions standards for the control of air pollution, including those necessary to obtain EPA approval under section 110 of the CAA. Sections APC–S–1, *Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants,* and APC–S–3, *Regulations for the Prevention of Air Pollution Emergency Episodes,* establish enforceable emissions limitations and other control measures, means or techniques, for activities that contribute to NO_2 concentrations in the ambient air and provide authority for MDEQ to establish such limits and measures as well as schedules for compliance through SIP-approved permits to meet the applicable requirements of the CAA. EPA has made the preliminary determination that the provisions contained in these regulations, and Mississippi's statute are adequate for enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance for the 2010 1-hour NO_2 NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[19]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

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[15] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[16] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] *See, e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[18] *Mississippi Code Title 49* is referenced in the State's infrastructure SIP submissions as "Appendix A–9." As discussed, unless otherwise indicated herein, portions of the Mississippi Code referenced in this proposal are not incorporated into the SIP.

[19] On June 12, 2015, EPA published a final action entitled, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction." *See* 80 FR 33840.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. Section APC–S–1, *Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants,* and *Mississippi Code Title 49,* Section 49–17–17(g), provides MDEQ with the authority to collect and disseminate information relating to air quality and pollution and the prevention, control, supervision, and abatement thereof. Annually, States develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[20] On June 9, 2015, Mississippi submitted its monitoring network plan to EPA, and on October 6, 2015, EPA approved this plan. Mississippi's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0751. EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for the ambient air quality monitoring and data system requirements related to the 2010 1-hour NO_2 NAAQS.

3. 110(a)(2)(C) *Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* Section 110(a)(2)(C) consists of three sub-elements; enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). To meet the requirements for this element, MDEQ cited Section APC–S–5, *Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality,* Section APC–S–2, *Permit Regulations for the Construction and/or Operation of Air Emissions Equipment.* These regulations enable MDEQ to regulate sources contributing to the 2010 1-hour NO_2 NAAQS through enforceable permits.

Enforcement: MDEQ's APC–S–2, *Permit Regulation for the Construction and/or Operation of Air Emissions Equipment,* Section VI provides for the enforcement of NO_2 emission limits and control measures through construction permitting for new or modified stationary sources. Also note that under *Mississippi Code Title 49, Chapter 17,* MDEQ has enforcement authority to seek penalties and injunctive relief for violations of emission limits and other control measures and violations of permits.

PSD Permitting for Major Sources: With respect to Mississippi's February 28, 2013, infrastructure SIP submission related to the PSD permitting requirements for major sources of section 110(a)(2)(C), EPA took final action to approve these provisions for the 2010 1-hour NO_2 NAAQS on March 18, 2015. *See* 80 FR 14019.

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source preconstruction program that regulates emissions of the 2010 1-hour NO_2 NAAQS. Mississippi has a SIP-approved minor NSR permitting program at Section APC–S–2, Section I. D, *Permitting Requirements* that regulates the preconstruction permitting of modifications and construction of minor stationary sources.

EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for program enforcement of control measures and regulation of minor sources and modifications related to the 2010 1-hour NO_2 NAAQS.

4. 110(a)(2)(D)(i)(I) and (II) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components; 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4").

110(a)(2)(D)(i)(I)—*Prongs 1 and 2:* EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) because Mississippi's 2010 1-hour NO_2 NAAQS infrastructure submission did not address prongs 1 and 2.

110(a)(2)(D)(i)(II)—*Prong 3:* With respect to Mississippi's infrastructure SIP submission related to the interstate transport requirements for PSD of section 110(a)(2)(D)(i)(II) (prong 3), EPA took final action to approve Mississippi's February 28, 2013, infrastructure SIP submission regarding prong 3 of D(i) for the 2010 1-hour NO_2 NAAQS on March 18, 2015. *See* 80 FR 14019.

110(a)(2)(D)(i)(II)—*Prong 4:* EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to visibility protection in other states of section 110(a)(2)(D)(i)(II) (prong 4) and will consider these requirements in relation to Mississippi's 2010 1-hour NO_2 NAAQS infrastructure submission in a separate rulemaking.

5. 110(a)(2)(D)(ii) *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Section APC–S–5, *Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality* provides how MDEQ will notify neighboring states of potential impacts from new or modified sources consistent with the requirements of 40 CFR 51.166, which is adopted by reference into the Mississippi SIP. Additionally, Mississippi does not have any pending obligation under section 115 and 126 of the CAA. EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution

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[20] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

abatement for the 2010 1-hour NO_2 NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Mississippi's SIP as meeting the requirements of sections 110(a)(2)(E)(i) and (iii). EPA is proposing to approve in part and disapprove in part Mississippi's SIP respecting section 110(a)(2)(E)(ii). EPA's rationale for the proposals respecting each section of 110(a)(2)(E) is described later on.

To satisfy the requirements of sections 110(a)(2)(E)(i) and (iii), Mississippi provides that MDEQ is responsible for promulgating rules and regulations for the NAAQS, emissions standards, general policies, a system of permits, fee schedules for the review of plans, and other planning needs as found in *Mississippi Code Title 49,* Section 49–17–17(d) and Section 49–17–17(h) (Appendix A–9). As evidence of the adequacy of MDEQ's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Mississippi on April 19, 2016, outlining 105 grant commitments and the current status of these commitments for fiscal year 2015. The letter EPA submitted to Mississippi can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0751. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2015, therefore, MDEQ's grants were finalized and closed out. EPA has made the preliminary determination that Mississippi has adequate resources for implementation of the 2010 1-hour NO_2 NAAQS.

To meet the requirements of section 110(a)(2)(E)(ii), states must comply with the requirements respecting state boards pursuant to section 128 of the Act. Section 128 of the CAA requires that states include provisions in their SIP to address conflicts of interest for state boards or bodies that oversee CAA permits and enforcement orders and disclosure of conflict of interest requirements. Specifically, CAA section 128(a)(1) necessitates that each SIP shall require that at least a majority of any board or body which approves permits or enforcement orders shall be subject to the described public interest service and income restrictions therein. Subsection 128(a)(2) requires that the members of any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements.

To meet its section 110(a)(2)(E)(ii) obligations for the 2010 1-hour NO_2 NAAQS, Mississippi's infrastructure SIP submission cites Article 4, Section 109 of the Mississippi Constitution and portions of Mississippi Code sections 25–4–25, –27, –29, –103, –105, and –109. These provisions were incorporated into the Mississippi SIP to meet CAA section 128 requirements in EPA's final action for the 1997 and 2006 $PM_{2.5}$ NAAQS infrastructure SIP. *See* 78 FR 20793.[21] In this same final action for the 1997 and 2006 $PM_{2.5}$ NAAQS infrastructure SIP (78 FR 20793), EPA disapproved Mississippi's October 11, 2012, submission as not satisfying the significant portion of income requirement of section 128(a)(1).

With respect to the public interest requirement of section 128(a)(1) and the adequate disclosure of conflicts of interest requirement of section 128(a)(2), EPA has previously found these requirements to be satisfied by the existing provisions in Mississippi's SIP. *See* 78 FR 20793.

With respect to the significant portion of income requirement of section 128(a)(1), the provisions included in the February 28, 2013 infrastructure SIP submission do not preclude at least a majority of the members of the Mississippi Boards[22] from receiving a significant portion of their income from persons subject to permits or enforcement orders issued by such Boards. While the submitted laws and provisions preclude members of the Mississippi Boards from certain types of income (*e.g.,* contracts with State or political subdivisions thereof, or income obtained through the use of his or her public office or obtained to influence a decision of the Mississippi Boards), they do not preclude a majority of members of the Mississippi Boards from deriving any significant portion of their income from persons subject to permits or enforcement orders so long as that income is not derived from one of the proscribed methods described in the laws and provisions submitted by the State. To date, because a majority of board members may still derive a significant portion of income from persons subject to permits or enforcement orders issued by the Mississippi Boards, the Mississippi SIP does not meet the section 128(a)(1) majority requirements respecting significant portion of income, and as such, EPA is proposing to disapprove the State's 110(a)(2)(E)(ii) submission as it relates only to this portion of section 128(a)(1).

Accordingly, EPA is proposing to approve the section 110(a)(2)(E)(ii) submission as it relates to the public interest requirements of section 128(a)(1) and the conflict of interest disclosure provisions of section 128(a)(2) and proposing to disapprove Mississippi's section 110(a)(2)(E)(ii) submission as it pertains to compliance with the significant portion of income requirement of section 128(a)(1) for the 2010 1-hour NO_2 NAAQS.

7. 110(a)(2)(F) *Stationary Source Monitoring and Reporting:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. Section APC–S–2, *Permit Regulations for the Construction and/or Operation of Air Emissions Equipment,* establishes requirements for emissions compliance testing utilizing emissions sampling and analysis. It further describes how the State ensures the quality of its data through observing emissions and monitoring operations. MDEQ uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. *Mississippi Code 49,*

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[21] This final action pertained to Mississippi's October 11, 2012, infrastructure SIP submission and only addressed compliance with 110(a)(2)(E)(ii) respecting CAA section 128 requirements.

[22] The Mississippi Commission on Environmental Quality issues and supervises enforcement orders, and the Mississippi Department of Environmental Quality Permit Board has the authority to issue, modify, revoke or deny permits.

Section 49–17–21 (Appendix A–9) provides MDEQ with the authority to require the maintenance of records related to the operation of air contaminant sources and any authorized representative of the Commission may examine and copy any such records or memoranda pertaining to the operation of such contaminant source. Section APC–S–2 lists requirements for compliance testing and reporting that is required to be included in any MDEQ air pollution permit and requires that copies of records relating to the operation of air contamination sources be submitted to the Permit Board as required by the permit or upon request. Section APC–S–1, *Air Emission Regulations For The Prevention, Abatement, and Control of Air Contaminants,* authorizes source owners or operators to use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certifications. EPA is unaware of any provision preventing the use of credible evidence in the Mississippi SIP.

Additionally, Mississippi is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System (EIS). States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Mississippi made its latest update to the 2012 NEI on January 9, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for the stationary source monitoring systems related to the 2010 1-hour NO_2 NAAQS.

8. 110(a)(2)(G) *Emergency Powers:* Section 110(a)(2)(G) requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. *Mississippi Code Title 49,* Section 49–17–27 (Appendix A–9) and APC–S–3, *Regulations for the Prevention of Air Pollution Emergency Episodes,* identify air pollution emergency episodes and preplanned abatement strategies. Specifically, Section APC–S–3 authorizes the MDEQ Director, once it has been determined that an Air Pollution Emergency Episode condition exists at one or more monitoring sites solely because of emissions from a limited number of sources, to order source(s) to put into effect the emission control programs which are applicable for each episode stage. Section APC–S–3 also lists regulations to prevent the excessive buildup of air pollutants during air pollution episodes. Also, *Mississippi Code Title 49,* Section 49–17–27 (Appendix A–9), states that in the event an emergency is found to exist by the Mississippi Commission on Environmental Quality, it may issue an emergency order as circumstances may require. Emergency situations include those which create an imminent and substantial endangerment threatening the public health and safety or the lives and property of the people in Mississippi. EPA has made the preliminary determination that Mississippi's SIP is adequate for emergency powers related to the 2010 1-hour NO_2 NAAQS. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. MDEQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Mississippi. The State has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. *Mississippi Code Title 49,* Section 49–17–17(h) (Appendix A–9), provides MDEQ with the statutory authority to adopt, modify or repeal and promulgate ambient air and water quality standards and emissions standards for the State. As such, the State has the authority to revise the SIP to accommodate changes to NAAQS and revise the SIP if the EPA Administrator finds the plan to be substantially inadequate to attain the NAAQS. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2010 1-hour NO_2 NAAQS when necessary.

10. 110(a)(2)(J) *Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve Mississippi's infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127; and visibility protection requirements of part C of the Act. With respect to Mississippi's infrastructure SIP submission related to the preconstruction PSD permitting requirements of section 110(a)(2)(J), EPA took final action to approve Mississippi's February 28, 2013, 2010 1-hour NO_2 NAAQS infrastructure SIP for these requirements on March 18, 2015. *See* 80 FR 14019. EPA's rationale for its proposed action regarding applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility protection requirements is described later in this document.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and federal land managers carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. Section APC–S–5, *Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality* and *Mississippi Code Title 49,* Section 49–17–17(c) (Appendix A–9), along with the State's various implementations plans, such as the State's Regional Haze Implementation Plan, provide for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers whose jurisdictions might be affected by SIP development activities. Mississippi adopted state-wide consultation procedures for the implementation of transportation conformity. These consultation procedures were developed in coordination with the transportation partners in the State and are consistent with the approaches used for development of mobile inventories for SIPs. Implementation of transportation conformity as outlined in the consultation procedures requires MDEQ to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate that the State meets applicable requirements related to consultation with government officials for the 2010 1-hour NO_2 NAAQS when necessary. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submissions with respect to section 110(a)(2)(J) consultation with government officials.

Public notification (127 public notification): These requirements are met through regulation Section APC–S–3, *Mississippi Regulations for the Prevention of Air Pollution Emergency Episodes,* which requires that MDEQ notify the public of any air pollution alert, warning, or emergency. The MDEQ Web site also provides air quality summary data, air quality index reports and links to more information regarding public awareness of measures that can prevent such exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2010 1-hour NO_2 NAAQS when necessary. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submissions with respect to section 110(a)(2)(J) public notification.

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. MDEQ referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so MDEQ does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that Mississippi's infrastructure SIP submission related to the 2010 1-hour NO_2 NAAQS is approvable for the visibility protection element of section 110(a)(2)(J) and that Mississippi does not need to rely on its regional haze program to address this element.

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. Sections APC–S–2, V. B., *Permit Regulation for the Construction and/or Operation of Air Emissions Equipment,* and APC–S–5, *Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality,* specify that required air modeling be conducted in accordance with 40 CFR part 51, Appendix W "Guideline on Air Quality Models," as incorporated into the Mississippi SIP. These standards demonstrate that Mississippi has the authority to perform air quality modeling and provide relevant data for the purpose of predicting the effect on ambient air quality of the 2010 1-hour NO_2 NAAQS. Also of note, *Mississippi Code Title* 49, Section 49–17–17(e) (Appendix A–9),[23] authorizes MDEQ to "encourage, participate in, or conduct studies, investigations, research and demonstrations relating to air and water quality and pollution and causes, prevention, control and abatement as it may deem advisable and necessary for the discharge of its duties under [the Mississippi air and water pollution control law]." Additionally, Mississippi participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2010 1-hour NO_2 NAAQS, for the southeastern states. Taken as a whole, Mississippi's air quality regulations and practices demonstrate that MDEQ has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2010 1-hour NO_2 NAAQS. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2010 1-hour NO_2 NAAQS when necessary. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submissions with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) *Permitting Fees:* Section 110(a)(2)(L) requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Mississippi Code Title 49, Section 49–2–9(c) (Appendix A–9), authorizes MDEQ to apply for, receive, and expend Federal or state funds in order to operate its air programs. *Mississippi Code Title 49,* Section 49–17–30 (Appendix A–9), provides for the assessment of Title V permit fees to cover the reasonable cost of reviewing and acting upon air permitting activities in the state including title V, PSD and NNSR permits. *Mississippi Code Title 49,* Section 49–17–14 (Appendix A–9), allows MDEQ to expend or utilize monies in the Mississippi Air Operating Permit Program Fee Trust Fund to pay all reasonable direct and indirect costs associated with the development and administration of the title V program and the PSD and NNSR permitting including. The Mississippi Air Operating Permit Program Fee Trust Fund consists of state legislative appropriations, Federal grant funds and title V fees. Additionally, Mississippi has a federally-approved title V operating permit program at Section APC–S–6[24] that covers the implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Mississippi adequately provides for permitting fees related to the 2010 1-hour NO_2 NAAQS when necessary.

13. 110(a)(2)(M) *Consultation and Participation by Affected Local Entities:*

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[23] *Mississippi Code Title 49* is referenced in the State's infrastructure SIP submissions as "Appendix A–9." As discussed, unless otherwise indicated herein, portions of the Mississippi Code referenced in this proposal are not incorporated into the SIP.

[24] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. *Mississippi Code Title 49,* Appendix A–9, Section 49–17–17(c), gives the Commission the statutory authority to advise and consult with any political subdivisions in the State. *Mississippi Code Title 49,* Appendix A–9, Section 49–17–19(b) requires the Commission to conduct public hearings in accordance with EPA regulations prior to establishing, amending, or repealing standards of air quality. Additionally, MDEQ works closely with local political subdivisions during the development of its transportation conformity SIP and regional haze SIP. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate consultation with affected local entities related to the 2010 1-hour NO_2 NAAQS when necessary.

V. Proposed Action

With the exception of the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), prong 3 of (D)(i), and (J), the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility protection of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), and the state board majority requirements respecting the significant portion of income of section 110(a)(2)(E)(ii), EPA is proposing to approve that Mississippi's February 28, 2013, SIP submission for the 2010 1-hour NO_2 NAAQS has met the above-described infrastructure SIP requirements because these aspects of the submission are consistent with section 110 of the CAA. EPA is proposing to disapprove in part section 110(a)(2)(E)(ii) of Mississippi's infrastructure submission because a majority of board members may still derive a significant portion of income from persons subject to permits or enforcement orders issued by the Mississippi Boards. Therefore, its current SIP does not meet the section 128(a)(1) majority requirements respecting significant portion of income. This proposed action, however, does not include the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), prong 3 of (D)(i), and (J), which have been approved in a separate action, or the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of prongs 1, 2 and 4 of section 110(a)(2)(D)(i), which will be addressed by EPA in a separate action.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a CAA Part D Plan or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP call) starts a sanctions clock. The portion of section 110(a)(2)(E)(ii) provisions (the provisions being proposed for disapproval in this action) were not submitted to meet requirements for Part D or a SIP call, and therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered. However, if this disapproval action is finalized, that final action will trigger the requirement under section 110(c) that EPA promulgate a federal implementation plan (FIP) no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and EPA approves the plan or plan revision before EPA promulgates such FIP.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 12, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–12102 Filed 5–23–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket DOT–OST–2015–0075]

Transportation for Individuals With Disabilities; Service Criteria for Complementary Paratransit Fares

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Notification of disposition of petition for rulemaking.

SUMMARY: This document announces the disposition of a petition for rulemaking from Access Services concerning the Department's regulations implementing

the Americans with Disabilities Act (ADA) with respect to the method of determining the fare for a trip charged to an ADA paratransit-eligible user. The petition asked the Department to revise its regulation to allow for a "coordinated" or two-tier fare structure. The current regulation provides that the fare shall not exceed twice the fare that would be charged to an individual paying full fare for a similar trip on the fixed route system. On December 4, 2015, President Obama signed into law the Fixing America's Surface Transportation (FAST) Act. Section 3023 of the FAST Act allows the fare structure Access Services supported in its petition for rulemaking, thereby rendering the petition for rulemaking moot.

DATES: May 24, 2016.

FOR FURTHER INFORMATION CONTACT: Jill Laptosky, Attorney-Advisor, Office of General Counsel, DOT, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone: 202–493–0308, or email, *Jill.Laptosky@dot.gov;* or Bonnie Graves, Assistant Chief Counsel for Legislation and Regulations, Office of Chief Counsel, Federal Transit Administration, same address, telephone: 202–366–4011, or email, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION: On March 4, 2015, the U.S. Department of Transportation (DOT) received a petition for rulemaking from Access Services, the Americans with Disabilities Act (ADA) complementary paratransit provider for 44 fixed route transit providers in Los Angeles County, California. Access Services described that it uses a "coordinated" or two-tier fare structure where it generally charges $2.75 for one-way trips up to 19.9 miles, and $3.50 for one-way trips of 20 miles or more. In some cases, these fares exceed twice the fixed route fare. The DOT's ADA regulation at 49 CFR 37.131(c) provides that the fare for a trip charged to an ADA paratransit-eligible user of the complementary paratransit service shall not exceed twice the fare that would be charged to an individual paying full fare for a trip of similar length, at a similar time of day, on the entity's fixed route system. In recent triennial reviews of some fixed route providers in Los Angeles County, the Federal Transit Administration (FTA) has made findings that the ADA paratransit fares exceed twice the fixed route fare. In other words, some paratransit riders had been paying more for ADA paratransit fares than they should have been under the Department's regulations.

On August 20, 2015, the Department placed Access Services' petition for rulemaking in a public docket and sought comments on the petition in order to help the Department determine whether to grant or deny the petition. The Department received approximately 179 comments to the docket, several with multiple signatures. With the exception of one person, all those in support of the petition were in Access Services' service area, and all opposed were outside of the service area.

On December 4, 2015, Congress enacted the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94). Section 3023 of the FAST Act provides that notwithstanding 49 CFR 37.131(c), any paratransit system currently coordinating complementary paratransit service for more than 40 fixed route agencies shall be permitted to continue using an existing tiered, distance-based coordinated paratransit fare system, if the fare for the existing tiered, distance-based coordinated paratransit fare system is not increased by a greater percentage than any increase to the fixed route fare for the largest transit agency in the complementary paratransit service area.

Given this statutory provision, the Department has determined the issue is moot and no further action is necessary with regard to this petition for rulemaking. As a result, Access Services may continue to operate its coordinated fare structure notwithstanding 49 CFR 37.131(c) and in compliance with section 3023 of the FAST Act.

Issued in Washington, DC, this 5th day of May, 2016, under authority delegated in 49 CFR 1.27(a).

Kathryn B. Thomson,

General Counsel.

[FR Doc. 2016–11182 Filed 5–23–16; 8:45 am]

BILLING CODE 4910–9X–P

Notices

Federal Register
Vol. 81, No. 100
Tuesday, May 24, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Montana Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Montana Resource Advisory Committee (RAC) will meet in Dillon, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/bdnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held June 24, 2016, from 9:30 a.m. to 5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Beaverhead-Deerlodge National Forest Supervisor's Office, Main Conference Room, 420 Barrett Street, Dillon, Montana. A teleconference phone line (conference call) will be available, for the conference line information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Beaverhead-Deerlodge National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Breck Hudson, RAC Coordinator, by phone at 406–683–3979 or via email at *bhudson@fsfed.us.*

Individuals who use telecommumcation devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend projects for title II funding:

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 24, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Breck Hudson, RAC Coordinator, 420 Barrett Street, Dillon, Montana 59725; by email to *bhudson@fsfed.us* or via facsimile to 406–683–3955.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: May 13, 2016.

Melany Glossa,

Forest Supervisor.

[FR Doc. 2016–12154 Filed 5–23–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee (Committee) will meet in South Lake Tahoe, California. The Committee is established consistent with the Federal Advisory Committee Act of 1972. Additional information concerning the Committee, including meeting summary/minutes, can be found by visiting the Committee's Web site at: *http://www.fs.usda.gov/goto/ltbmu/LTFAC.* The summary/minutes of the meetings will be posted within 21 days of the meetings.

DATES: The meeting will be held on June 9, 2016, from 1:00 p.m. to 3:00 p.m.

All meetings are subject to cancellation. For updated status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the USDA Forest Service, Lake Tahoe Basin Management Unit, The Emerald Bay Conference Room, 35 College Drive, South Lake Tahoe, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the USDA Forest Service, 35 College Drive, South Lake Tahoe, California 96150. Please call ahead at 530–543–2774 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Karen Kuentz, USDA Forest Service, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, California 96150, or by phone at 530–543–2774, or by email at *kkuentz@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to:

(1) Review and prioritize the Committee's goals and objectives;

(2) Provide a presentation on the TIE steering committee's charter and functions;

(3) Present the Federal partnership program; Presentation on tree mortality activities; and

(4) Discuss the 2016 schedule of meetings.

The meeting is open to the public. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 2, 2016, to be scheduled on the agenda. Written comments and time requests for oral comments must be sent to Karen Kuentz, USDA Forest Service, Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, California 96150, or by email at *kkuentz@fs.fed.us,* or via facsimile to 530–543–2693.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: May 12, 2016.

Jeff Marsolais,

Forest Supervisor.

[FR Doc. 2016–11942 Filed 5–23–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Rural Energy Savings Program: Measurement, Verification, Training and Technical Assistance

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of comment solicitation.

SUMMARY: Congress recently authorized the implementation of the Rural Energy Savings Program (RESP) in section 6407 of subtitle E of title VI of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171; 116 Stat. 424). The purpose of RESP is to help rural families and small businesses achieve cost savings by providing loans to qualified consumers to implement durable cost-effective energy efficiency measures. The Rural Utilities Service (RUS or Agency) seeks public comments on carrying out paragraph (e) of section 6407 requiring RUS to establish a plan for measurement and verification of energy efficiency measures implemented and funded pursuant to RESP. Public comments are also invited on the additional requirement under paragraph (e) requiring RUS to develop a program to provide technical assistance and training to the employees of eligible entities carrying out the provisions of RESP. The public input requested on both these required purposes under the RESP Program will allow all affected stakeholders the opportunity to contribute to the development of agency procedures for implementing this statute.

DATES: Written comments must be received by RUS no later than June 23, 2016.

ADDRESSES: Submit comments, identified by docket number RUS–16–ELECTRIC–0028, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Postal Mail/Commercial Delivery/Hand Delivery: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, STOP 1522, Room 5159, Washington, DC 20250–1522.

RUS will post all comments received without change, including any personal information that is included with the comment, on *http://www.regulations.gov.* Comments will be available for inspection online at *http://www.regulations.gov* and at the address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Titilayo Ogunyale, Senior Advisor, Office of the Administrator, Rural Utilities Service, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW., STOP 1510, Room 5136–S, Washington DC 20250–1510; Telephone: (202) 720–0736; Email: *Titilayo.Ogunyale@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

RUS provides long-term financing for the purpose of furnishing and improving electric service in rural areas. Eligible purposes for RUS loans also include assisting electric borrowers to implement demand-side management, energy efficiency and energy conservation programs, and on-grid and off-grid renewable energy systems. The Agency's traditional lending program provides RUS loans to eligible electric system borrowers. RESP differs from the Agency's traditional lending program in that it focuses on providing loans to eligible entities that agree to provide consumer loans to qualified consumers for energy efficiency measures which are undertaken on the consumer side of the meter.

Current RUS borrowers are traditionally well-established utilities, most frequently rural electric cooperatives with a history of participation in the RUS program. Entities eligible to borrow from RUS and relend to consumers pursuant to RESP are not restricted to electric utilities per se; entities owned or controlled by current or former RUS borrowers and those entities described in 7 CFR 1710.10 may also participate in the RESP program.

For purposes of this Notice, the statute contemplates that the Secretary, acting through RUS, will (1) establish a plan for the measurement and verification of the energy efficiency activities that are undertaken pursuant to the plans implemented with RUS funds, and (2) develop a program to provide technical assistance and training to the employees of eligible entities to carry out the responsibilities associated with implementing the required implementation plans for the use of loan funds.

RUS is currently determining the best method for carrying out the RESP imposed requirement for establishing such an implementation plan and for crafting the related statement of work for the potential outside contractor that will be engaged to provide support services in this endeavor. RUS is also considering how best to meet its responsibilities under the statute to develop a program to provide technical assistance and training to the employees of eligible entities.

Request for Comment

Stakeholder input is vital to ensure that the implementation of the RESP program measurement and verification measures and related training will be valuable, cost effective and achieve the desired results. The Agency recognizes there is a risk that the cost of measurement and verification activities exceed the savings which are intended and expected from the energy efficiency measures. Also, the Agency notes that there are a number of quality training programs already in existence and available in the industry. Accordingly, RUS poses the following questions and discussion items to guide stakeholder comments. RUS also welcomes pertinent comments that are beyond the scope of the following questions.

Measurement of the Results of Energy Efficiency Investments

There is no standard set of energy efficiency measures that RUS proposes to finance with RESP funds. Each entity that applies for a RESP loan will have its own list of energy efficiency measures and related implementation plan. The borrower is also required to measure and verify the results it achieves. The agency requests responses and comments as follows:

1. Is it reasonable to require that the borrower collect data before and after implementation of the energy efficiency measures as part of the measurement and verification of cost savings, or, in the alternative, can a borrower rely on "deemed savings" for certain measures?
2. If "deemed savings" calculations are determined to be reasonable, where can independent resources for this information be found?

Best Entity To Measure the Results of Energy Efficiency Investments

1. Is it reasonable for the Agency to rely on representations made by the borrower regarding the results it achieves?
2. What parameters should the Agency impose on self-measurement and verification activities included in a borrower's implementation plan?

Form of Training Program To Be Developed and Funded as Part of the RESP Program

RUS has observed that there are a myriad of programs currently available in the market to train employees of eligible entities to carry out measurement and verification functions. RUS invites comments on the best approach for RUS to take to maximize the training results achieved with limited funds.

1. RUS is considering establishing a "tuition reimbursement" program whereby an outside contractor administers a tuition reimbursement fund to reimburse eligible entities for the costs incurred from sending an employee to a course provided by a qualified vendor as part of a recognized certification program. Please comment on how best to structure such a "tuition reimbursement program."
2. RUS is contemplating setting up a circuit rider program to provide training and technical assistance on location for energy efficiency measures. The intent is to follow the model of a comparable circuit rider program funded by RUS as part of the agency's authorized activities in the water program. In the circuit rider program, experts visit rural water systems around the country and offer training to employees as well as technical assistance. These visits can be requested by a client in response to special needs or are part of a regular schedule that is worked out in advance. Please comment on the pros and cons of taking this approach.

Needs Specific to Manufactured Housing

Many traditional RUS electric utility borrowers have an above average number of customers residing in mobile homes or prefabricated dwellings. These dwellings present unique challenges in implementing energy efficiency measures. The agency requests responses and comments on the following questions:

1. What program requirements are recommended for new manufactured housing? Is it reasonable for a Borrower to undertake a rebate program for new buyers agreeing to purchase new homes with certain upgrades? How will a borrower best verify that the upgrades are installed and producing the results as marketed?
2. With respect to pre-existing mobile homes, what measurements can be taken to produce the most cost effective energy savings for the consumer?
3. A disproportionate number of the occupants of manufactured housing are renters. The owners may not necessarily have a financial incentive to invest in more efficient heating and cooling systems, causing the occupant to suffer very high energy bills. Are there programs which have successfully addressed this problem and what are the attributes of these programs?
4. Is there a way to best incorporate consumer financing of energy efficiency measures with pre-paid billing programs?

The Scope of RUS Efforts

There are limited funds for implementing the provision of RESP that contemplates RUS entering into one or more contracts for measurement, verification, training or technical assistance. As an initial matter, these funds are not expected to exceed ten percent of available appropriations. As part of the Agency's initial implementation of this portion of the statute, we anticipate that the scope of work cannot extend to all entities and all geographic areas needing these services. Accordingly, comments are invited on how to tailor the scope of the Agency's initial pilot implementation of this requirement in light of the limited funding.

Dated: May 17, 2016.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2016–12192 Filed 5–23–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Generic Clearance for Questionnaire Pretesting Research.

OMB Control Number: 0607–0725.

Form Number(s): Various.

Type of Request: Regular.

Number of Respondents: 5,500 respondents annually.

Average Hours per Response: 1 hour.

Burden Hours: 5,500 hours annually.

Needs and Uses: The information collected in this program of developing and testing questionnaires will be used by staff from the Census Bureau and sponsoring agencies to evaluate and improve the quality of the data in the surveys and censuses that are ultimately conducted.

Affected Public: Individuals or households, businesses or other for profit, farms.

Frequency: TBD.

Respondent's Obligation: Voluntary.

Legal Authority: Data collection for this project is authorized under the authorizing legislation for the questionnaire being tested. This may be Title 13, Sections 131, 141, 161, 181, 182, 193, and 301 for Census Bureau sponsored surveys, and Title 13 and 15 for surveys sponsored by other Federal agencies. We do not now know what other titles will be referenced, since we do not know what survey questionnaires will be pretested during the course of the clearance.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: May 18, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–12087 Filed 5–23–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–36–2016]

Foreign-Trade Zone 93—Raleigh-Durham, North Carolina, Application for Reorganization (Expansion of Service Area) Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Triangle J Council of Governments, grantee of Foreign-Trade Zone 93, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on May 17, 2016.

FTZ 93 was approved by the FTZ Board on November 4, 1983 (Board Order 233, 48 FR 52108, November 16, 1983) and reorganized under the ASF on November 30, 2012 (Board Order 1872, 77 FR 73978–73979, December 12, 2012), and the service area was expanded on January 9, 2015 (Board Order 1963, 80 FR 3551, January 23, 2015). The zone currently has a service area that includes the Counties of Chatham, Durham, Franklin, Granville, Harnett, Johnston, Lee, Moore, Orange, Person, Sampson, Vance, Wake and Warren.

The applicant is now requesting authority to expand the service area of the zone to include Wilson County, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The application indicates that the proposed expanded service area is adjacent to the Raleigh-Durham Customs and Border Protection port of entry.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 25, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 8, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or 202–482–1346.

Dated: May 17, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–12163 Filed 5–23–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–873]

Certain Cold-Rolled Steel Flat Products From Japan: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the "Department") determines that certain cold-rolled steel flat products ("cold-rolled steel") from Japan are being, or likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). JFE Steel Corporation ("JFE") and Nippon Steel & Sumitomo Metal Corporation ("NSSMC") are the mandatory respondents in this investigation. The period of investigation ("POI") is July 1, 2014 through June 30, 2015. The estimated weighted average dumping margins of sales at LTFV are shown in the "Final Determination" section of this notice.

DATES: *Effective Date:* May 24, 2016.

FOR FURTHER INFORMATION CONTACT: Trisha Tran, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4852.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2016, the Department published its preliminary affirmative determination of sales at LTFV and preliminary affirmative determination of critical circumstances, in part, in the LTFV investigation of cold-rolled steel from Japan.[1] We invited interested parties to comment on our preliminary determination. We only received comments regarding the scope of this investigation. No interested party requested a hearing.

Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. For a full description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I.

Since the *Preliminary Determination,* eight interested parties (*i.e.,* JFE Steel Corporation, Electrolux Home Products, Inc., Electrolux Home Care Products, Inc., ArcelorMittal USA LLC, AK Steel Corporation, Nucor Corporation, Steel Dynamics Inc., and United States Steel Corporation) commented on the scope of the investigation. The Department reviewed these comments and has made no changes to the scope of the investigation. For further discussion, *see* the "Final Scope Comments Memorandum."[2] The scope in Appendix I reflects the final unmodified scope language as it appeared in the *Preliminary Determination*.

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[1] *See Certain Cold-Rolled Steel Flat Products From Japan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances,* 81 FR 11747 (March 7, 2016) ("*Preliminary Determination*").

[2] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Final Scope Comments Decision Memorandum," dated concurrently with this final determination (Final Scope Comments Memorandum).

Verification

None of the mandatory respondents in the investigation provided information requested by the Department. Hence, no verification was conducted.

Analysis of Comments Received and Changes Since the Preliminary Determination

We made no changes to the *Preliminary Determination* because we received no comments pertaining to the *Preliminary Determination*.

Final Affirmative Determinations of Critical Circumstances, in Part

In accordance with section 733(e) of the Act and 19 CFR 351.206, we preliminarily found critical circumstances exist with respect to both of the mandatory respondents in the investigation of cold-rolled steel from Japan. With respect to the "All-Others" group, we preliminarily found that critical circumstances did not exist.[3]

As stated above, the Department did not receive any comments concerning the preliminary determination. Thus, for the final determination, we continue to find that, in accordance with section 735(a)(3) of the Act and 19 CFR 351.206, critical circumstances exist with respect to both mandatory respondents and that critical circumstances do not exist for the non-individually examined companies receiving the "All-Others" rate in this investigation.

Use of Adverse Facts Available

As stated in the *Preliminary Determination*, neither JFE nor NSSMC responded to the Department's questionnaire.[4] Accordingly, for the final determination, pursuant to section 776(b) of the Act, we applied adverse facts available to JFE and NSSMC.

Final Determination

As stated above, we made no changes to our preliminary affirmative LTFV determination. Therefore, we continue to determine that the following estimated weighted-average dumping margin exists for the following producers or exporters for the period July 1, 2014 through June 30, 2015.

Exporter/Producer	Weighted-average margin
JFE Steel Corporation	71.35 percent.
Nippon Steel & Sumitomo Metal Corporation.	71.35 percent.
All-Others	71.35 percent.

In addition, the Department continues to determine that voluntary respondent Hitachi Metals Limited had no sales of subject merchandise during to POI to examine.

All-Others Rate

We cannot apply the methodology described in section 735(c)(5)(A) of the Act to calculate the "All-Others" rate, as all of the margins in the preliminary determination were calculated under section 776 of the Act.[5] In cases where no weighted-average dumping margins besides zero, *de minimis*, or those determined entirely under section 776 of the Act have been established for individually estimated entities, in accordance with section 735(c)(5)(B) of the Act, the Department averages the margins calculated by the Petitioners in the Petition and applies the result to "All-Other" entities not individually examined. In this case, however, Petitioners calculated only one margin in the Petition. Therefore, for the final determination, we continue to assign as the "All-Others" rate the only margin in the Petition, which is 71.35 percent.[6]

Continuation and Partial Termination of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, for the final determination, we will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all entries of cold-rolled steel from Japan, as described in the scope of the investigation, from the mandatory respondents (*i.e.*, JFE and NSSMC) that are entered, or withdrawn from warehouse, for consumption on or after December 8, 2015, 90 days prior to the date of publication of the *Preliminary Determination* because we continue to find that critical circumstances exist with regard to imports exported by the mandatory respondents. In accordance with sections 733(d)(2) and 735(c)(1)(B) of the Act, for the final determination, we will direct CBP to continue the suspension of liquidation of all entries of cold-rolled steel from Japan, as described in the "Scope of the Investigation" section, from companies receiving the "All-Others" rate which were entered, or withdrawn from warehouse, for consumption on or after March 7, 2016, the date of publication of the *Preliminary Determination*.

Disclosure

We described the calculations used to determine the estimated weighted-average dumping margins based on adverse facts available, in the *Preliminary Determination*. We made no changes to our calculations since the *Preliminary Determination*. Thus, no additional disclosure of calculations is necessary for this final determination.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission ("ITC") of our final affirmative determination of sales at LTFV and final affirmative determination of critical circumstances, in part. Because the final determination in the proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of cold-rolled steel from Japan no later than 45 days after our final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on appropriate imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APOs in accordance with 19 CFR 351.305. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

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[3] *See Preliminary Determination.*

[4] *Id.*

[5] Id. at 11749.

[6] *See Certain Oil Country Tubular Goods From Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 79 FR 10487 (February 25, 2014), and accompanying Preliminary Decision Memorandum, unchanged in *Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 53691 (September 10, 2014).

Dated: May 16, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been "worked after rolling" (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these investigations are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, motor lamination steels, Advanced High Strength Steels ("AHSS"), and Ultra High Strength Steels ("UHSS"). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AI–ISS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;[7]
- Tool steels;[8]
- Silico-manganese steel;[9]
- Grain-oriented electrical steels ("GOES") as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland.*[10]
- Non-Oriented Electrical Steels ("NOES"), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.*[11]

Also excluded from the scope of this investigation is ultra-tempered automotive steel, which is hardened, tempered, surface polished, and meets the following specifications:

- Thickness: less than or equal to 1.0 mm;
- Width: less than or equal to 330 mm;
- Chemical composition:

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[7] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[8] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[9] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[10] *See Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 FR 42,501, 42,503 (July 22, 2014) ("*Grain-Oriented Electrical Steel From Germany, Japan, and Poland*"). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[11] *See Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71,741, 71,741–42 (December 3, 2014) ("*Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*"). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

Element	C	Si	Mn	P	S
Weight%	0.90–1.05	0.15–0.35	0.30–0.50	Less than or equal to 0.03.	Less than or equal to 0.006.

- Physical properties:

Width less than or equal to150mm.	Flatness of less than 0.2% of nominal strip width.
Width of 150 to 330mm.	Flatness of less than 5 mm of nominal strip width.

- Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite;
- Surface roughness: less than or equal to 0.80 µm Rz;
- Non-metallic inclusion:
  - Sulfide inclusion less than or equal to 0.04% (area percentage)
  - Oxide inclusion less than or equal to 0.05% (area percentage); and
- The mill test certificate must demonstrate that the steel is proprietary grade "PK" and specify the following:
  - The exact tensile strength, which must be greater than or equal to 1600 N/mm^2;
  - The exact hardness, which must be greater than or equal to 465 Vickers hardness number;
  - The exact elongation, which must be between 2.5% and 9.5%; and
  - Certified as having residual compressive stress within a range of 100 to 400 N/mm^2.

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and CBP purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12191 Filed 5–23–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before June 13, 2016. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 15–051. Applicant: Iowa State University of Science and Technology, 211 TASF, Ames, IA 50011–3020. Instrument: Electron Microscope. Manufacturer: FEI, Co., Czech Republic and Great Britain. Intended Use: The instrument will be used to perform microstructure examination, compositional analysis and orientation analysis on materials such as metals, compounds, alloys, oxides and organic materials. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 13, 2016.

Docket Number: 15–055. Applicant: Rutgers University, 136 Frelinghuysen Road, Piscataway, NJ 08854. Instrument: Optical Floating Zone Furnace. Manufacturer: Crystal Systems Corporation, Japan. Intended Use: The instrument will be used to grow high quality bulk single crystals of a variety of complex quantum materials including multiferroics, ferroelectrics and low-symmetry magnets. Research projects will include the duality between FR and PUA states in hexagonal manganites, the duality between Ising triangular antiferromagnetism and improper ferroelectricity in hexagonal systems, the domains and domain walls in other polar or chiral magnets, the domains and domain walls in new hybrid improper ferroelectrics, the domains and domain walls in metastable phases at the phase boundaries, and magnetic skyrmion in non-centrosymmetric magnets. The instrument is equipped with 5 high power (1000 W in total) continuous wavelength laser diodes as a heating source. Five lasers ensure temperature homogeneity along the azimuthal direction around the crystal rod to be greater than 95%. The maximum temperature gradient along the growth direction is greater than 150 degrees Celsius/mm. Crystal growth can go from extremely stable and slow growth to very rapid quenching mode, 0.01 to 300 mm/h. This enables the growth of incongruently melting and highly evaporating materials. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 29, 2016.

Docket Number: 15–058. Applicant: UChicago Argonne, 9700 South Cass Avenue, Lemont, IL 60439–4873. Instrument: IEX ARPES Cryo-Manipulator. Manufacturer: Omnivac, Hansjoerg Ruppender, Germany. Intended Use: The instrument will be used to cool and position single crystal and thin film samples in an angle-resolved photoemission spectroscopy (ARPES) chamber. ARPES is used to map the electronic band structure of material. Samples include high-temperature superconductors, graphene, and other low dimensional materials, metals and complex oxides. The instrument's unique features include ultra-high vacuum compatible, six-axes of motion with a specified range x: +/- 10mm, 1µm, +/- 0.05µm, y: +/- 10mm, 1µm, +/- 0.05µm, z: 300mm, 1µm, +/- 0.05µm, polar rotation: 360 degrees, 0.005 degrees, 0.0001 degrees, flip rotation: -15/+60 degrees, .1 degree, 0.05 degrees, azimuthal rotation: +/-90 degrees, .1 degree, 0.05 degrees, a low base temperature of 5.5K and high vibrational stability (motion at the sample < 500 nm). Justification for

Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: March 2, 2016.

Docket Number: 16–003. Applicant: Oregon Health & Science University, 3181 SW Sam Jackson Park Road, Portland, OR 97239. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to study how genomic features in model systems and humans encode the molecular, cellular and tissue structures that comprise normal and diseased tissues and apply the resulting information to improve management of human diseases including cancer, cardiovascular disease, immunodeficiency and dementia. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 15, 2016.

Docket Number: 16–006. Applicant: Texas Southwestern Medical Center, 5323 Harry Hinos Blvd., Dallas, TX 75390. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to learn how imaged proteins and molecules perform their cellular functions, which can be used to understand cases where these proteins and molecules malfunction and cause disease, such as cancer. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: May 6, 2016.

Docket Number: 16–009. Applicant: Stanford University, 299 Campus Drive West, Stanford, CA 94305–5126. Instrument: Electron Microscope. Manufacturer: FEI Company, Netherlands. Intended Use: The instrument will be used to determine the structures of proteins and protein complexes to atomic (3.5 angstroms+) or near atomic (10 angstroms+) resolution. Determining the structures to such high resolution will give insight into the basic biology of systems such as tissue samples, whole cells and purified proteins. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: March 2, 2016.

Dated: May 16, 2016.

Gregory W. Campbell,

Director of Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2016–12176 Filed 5–23–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–029]

Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that certain cold-rolled steel flat products (cold-rolled steel) from the People's Republic of China (the PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation is January 1, 2015, through June 30, 2015. The estimated weighted-average dumping margin of sales at LTFV is shown in the "Final Determination" section of this notice.

DATES: *Effective Date:* May 24, 2016.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4947 or (202) 482–0679, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2016, the Department published its preliminary affirmative determination of sales at LTFV and preliminary affirmative determination of critical circumstance in LTFV investigation of cold-rolled steel from the PRC.[1] We invited interested parties to comment on our preliminary determinations. We only received comments regarding the scope of this investigation. No interested party requested a hearing.

Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances from the PRC. For a full description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I.

Since the *Preliminary Determination,* eight interested parties (*i.e.,* JFE Steel Corporation, Electrolux Home Products, Inc., Electrolux Home Care Products, Inc., ArcelorMittal USA LLC, AK Steel Corporation, Nucor Corporation, Steel Dynamics Inc., and .United States Steel Corporation) commented on the scope of the investigation. The Department reviewed these comments and has made no changes to the scope of the investigation. For further discussion, *see* the Final Scope Comments Memorandum.[2] The scope in Appendix I reflects the final unmodified scope language as it appeared in the *Preliminary Determination.*

Verification

The only respondent in the antidumping investigation of cold-rolled steel from the PRC, the PRC-wide entity, did not provide information requested by the Department. Hence, no verification was conducted.

Analysis of Comments Received and Changes Since the Preliminary Determination

We made no changes to the *Preliminary Determination* because we received no comments pertaining to the *Preliminary Determination.*

Final Affirmative Determination of Critical Circumstances

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206, we preliminarily found critical circumstances exist with respect to imports of certain cold-rolled steel flat products from the PRC-wide entity.[3] As stated above, the Department did not receive any comments concerning the preliminary determination. Thus, for the final determination, we continue to find that, in accordance with section 735(a)(3) of the Act and 19 CFR 351.206, critical circumstances exist with respect to the PRC-wide entity.

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[1] *See Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances,* 81 FR 11751 (March 7, 2016) (*Preliminary Determination*).

[2] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Final Scope Comments Decision Memorandum," dated concurrently with this final determination (Final Scope Comments Memorandum).

[3] *See Preliminary Determination.*

Use of Adverse Facts Available

As stated in the *Preliminary Determination,* the PRC-wide entity failed to cooperate to the best of its ability.[4] Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Act, we find it appropriate to assign the estimated weighted-average dumping margin in the table below, which is based on total adverse facts available.[5]

Combination Rates

In the *Initiation Notice,*[6] the Department stated that it would calculate combination rates for PRC respondents that are eligible for separate rate in this investigation. This practice is described in Policy Bulletin 05.1, available at *http://enforcement.trade.gov/policy/index.html.* Because the Department has not granted a separate rate to any PRC respondent, the Department has not calculated combination rates for any PRC respondents.

Final Determination

As stated above, we made no changes to our affirmative preliminary LTFV determination; therefore, we continue to determine the following estimated weighted-average dumping margin exists for the PRC wide-entity during the period January 1, 2015, through June 30, 2015:

Company	Dumping rate
PRC-Wide Entity	265.79 percent

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, for the final determination, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of cold-rolled steel from the PRC as described in the "Scope of the Investigation" section which were entered, or withdrawn from warehouse, for consumption 90 days prior to the date of publication of the *Preliminary Determination,* pursuant to section 733(e)(2) of the Act.

As we stated in the *Preliminary Determination,* and consistent with our practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we will instruct CBP to require a cash deposit equal to the amount by which the normal value exceeds the export price or constructed export price, adjusted where appropriate for export subsidies and estimated domestic subsidy pass-through.[7] With respect to the PRC-wide entity, we find that an adjustment for export subsidies of 66.03 percent[8] is warranted because this is the countervailing duty rate attributable to export subsidies included in the countervailing duty rate to which all entries from the PRC-wide entity are currently subject. We are not adjusting the final determination for estimated domestic subsidy pass-through because we have no basis upon to make such an adjustment. Thus, we will offset the PRC-wide rate of 265.79 by the countervailing duty rate attributable to export subsidies (*i.e.,* 66.03 percent) to calculate the cash deposit *ad valorem* rate for the PRC-wide entity of 199.76 percent.[9] The suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We described the calculations used to determine the estimated weighted-average dumping margins based on adverse facts available, in the *Preliminary Determination.* We made no changes to our calculations since the *Preliminary Determination.* Thus, no additional disclosure of calculations is necessary for this final determination.

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of our final affirmative determination of sales at LTFV and final affirmative determination of critical circumstances. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of cold-rolled steel from the PRC no later than 45 days after our final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

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[4] *See Id.*, and accompanying Preliminary Decision Memorandum at 9–13.

[5] *Id.*

[6] *See Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 51198 (August 24, 2015) (*Initiation Notice*).

[7] *See Preliminary Determination.*

[8] *See* sections 772(c)(1)(C) and 777A(f) of the Act, respectively. Unlike in administrative reviews, the Department makes an adjustment for export subsidies in an LTFV investigation not in the calculation of the weighted-average dumping margin, but in the cash deposit instructions issued to U.S. Customs and Border Protection. *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at comment 1. The following programs are export specific in the concurrent countervailing duty investigation: Export Loans; Preferential Lending to Cold-Rolled Steel Producers and Exporters Classified As "Honorable Enterprises"; Preferential Income Tax Subsidies for Foreign Invested Enterprises—Export Oriented FIEs; Programs to Rebate Antidumping Legal Fees; Export Assistance Grants; Subsidies for Development of Famous Export Brands and China World Top Brands; Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands; Export Interest Subsidies; Export Seller's Credits; Export Buyer's Credits; Export Credit Insurance Subsidies; Export Credit Guarantees". *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Final Affirmative Determination, Final Partial Affirmative Critical Circumstances Determination,* and accompanying Issues and Decision Memorandum. The final determination in this companion CVD proceeding is being released concurrently with this final determination.

[9] The cash deposit rate reflecting the export subsidy offset will be in effect until the countervailing duty provisional measures expire (*i.e.,* 120 days after the publication of the preliminary determination of companion countervailing duty investigation).

Dated: May 16, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;[10]
- Tool steels;[11]
- Silico-manganese steel;[12]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in Grain-Oriented Electrical Steel From Germany, Japan, and Poland.[13]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.[14]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

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[10] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[11] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[12] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[13] *See* Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances, 79 FR 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[14] *See* Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders, 79 FR 71,741, 71,741–42 (Dep't of Commerce, December 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12186 Filed 5–23–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee Meeting

AGENCY: ITA, DOC.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Thursday, June 9, 2016, from 9:00 a.m. to 4:00 p.m. Eastern Daylight Time (EDT). The public session is from 3:00 p.m. to 4:00 p.m.

ADDRESSES: The meeting will be held in Room 1412, U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave. NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, ITA, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–1297; Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the Thursday, June 9, 2016 CINTAC meeting is as follows:

Closed Session (9:00 a.m. to 3:00 p.m.)

1. Discussion of matters determined to be exempt from the provisions of the Federal Advisory Committee Act relating to public meetings found in 5 U.S.C. App. §§ (10)(a)(1) and 10(a)(3).

Public Session (3:00 p.m. to 4:00 p.m.)

1. International Trade Administration's Civil Nuclear Trade Initiative Update
2. Civil Nuclear Trade Promotion Activities Discussion
3. Public comment period

The meeting will be disabled-accessible. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mr. Jonathan Chesebro at the contact information below by 5:00 p.m. EDT on Friday, June 3, 2016 in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EDT on Friday, June 3, 2016. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers. Speakers are requested to bring at least 20 copies of their oral comments for distribution to the participants and public at the meeting.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EDT on Friday, June 3, 2016. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Man Cho,

Director, Acting, Office of Energy and Environmental Industries.

[FR Doc. 2016–12274 Filed 5–23–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Determination To Partially Close Two Meetings of the Civil Nuclear Trade Advisory Committee

AGENCY: ITA, DOC.

ACTION: Notice of determination to partially close two meetings of the Civil Nuclear Trade Advisory Committee (CINTAC).

SUMMARY: This notice of determination announces the partial closure of the June 9, 2016 and August 4, 2016 meetings of the CINTAC.

DATES: The meetings are scheduled for Thursday, June 9, 2016, 9:00 a.m. to 4:00 p.m. Eastern Daylight Time (EDT) and Thursday August 4, 2016, 9:00 a.m. to 4:00 p.m. EDT. The public sessions of the meetings are from 3:00 p.m. to 4:00p.m.

ADDRESSES: The meetings will be held in Room 1412, U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave. NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, ITA, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–1297; Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Notice of Determination

In response to requests from representatives of a substantial segment of the U.S. civil nuclear industry and the U.S. Departments of State and Energy, the Secretary of Commerce, under discretionary authority, established the Civil Nuclear Trade Advisory Committee (the committee) in 2008, pursuant to provisions under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. The committee was most recently re-chartered in August 2014 and the current charter is set to expire in August 2016. It advises the Secretary of Commerce on the development and administration of programs and policies to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, for use by the Department of Commerce in its role as a member of the Civil Nuclear Trade Working Group of the Trade Promotion Coordinating Committee and the Department's active participation in the Atoms for Prosperity interagency group to promote U.S. civil nuclear trade.

In connection with that function, the committee provides advice on: (1) Matters concerning trade policy development and negotiations relating to U.S. civil nuclear exports; (2) the effect of U.S. Government policies, regulations, and programs, and the policies and practices of foreign governments on the export of U.S. civil nuclear goods and services; (3) the competitiveness of U.S. industry and its ability to compete for civil nuclear products and services opportunities in international markets, including specific problems in exporting, and U.S. Government and public/private actions to assist civil nuclear companies in expanding their exports; (4) the identification of priority civil nuclear markets with the potential for high immediate returns for U.S. exports, as well as emerging markets with a longer-term potential for U.S. exports; (5) strategies to increase private sector awareness and effective use of U.S. Government export promotion programs, and how U.S. Government programs may be more efficiently designed and coordinated; (6) the development of complementary industry and trade association export promotion programs, including ways for greater and more effective coordination of U.S. Government efforts with private sector organizations' civil nuclear export promotion efforts; and (7) the development of U.S. Government programs to encourage producers of civil nuclear products and services to enter new foreign markets, in connection with which the committee may advise on how to gather, disseminate, and promote awareness of information on civil nuclear exports and related trade issues.

Committee members represent U.S. industry and related U.S. civil nuclear trade organizations.

Committee activities are conducted consistent with the provisions of the FACA and its implementing regulations, 41 CFR subpart 102–3. FACA section 10(d) provides that an advisory committee meeting, or portions thereof, may be closed if the head of the agency to which the advisory committee reports determines such meeting may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)).

The closed portions of the meetings will involve committee discussions of proposed U.S. Government strategies and policies regarding: (1) Nuclear cooperation agreements; (2) implementation of the Convention on Supplementary Compensation for Nuclear Damage; (3) proposed bilateral commercial nuclear working groups; and (4) identification of specific trade barriers impacting the U.S. civil nuclear industry.

Subsection (c)(9)(B) of the Government in the Sunshine Act permits closure of a meeting or portion of a meeting if the meeting is likely to disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. 5 U.S.C. 552b(c)(9)(B). Premature disclosure of matters one through three listed in the preceding paragraph would be likely to significantly impair the implementation of proposed agency policies and actions.

Subsection (c)(4) of the Government in the Sunshine Act permits closure of a meeting or portion of a meeting if trade secrets and commercial or financial information obtained from a person and privileged or confidential will be disclosed at the meeting. 5 U.S.C. 552b(c)(4). As noted above in matter four, the committee will discuss foreign trade barriers facing the U.S. civil nuclear industry, with the aim of developing proposals for how the U.S. Government can develop strategies to strengthen the industry's competitiveness as it competes abroad. This portion of the meeting will include the disclosure of committee members' trade secrets and privileged or confidential commercial or financial information as the members discuss the specific trade barriers their companies and subsectors have encountered.

Accordingly, the Chief Financial Officer and Assistant Secretary for Administration at the U.S. Department of Commerce has determined, pursuant to Section 10(d) of the FACA (5 U.S.C. App. 2 section 10(d)), that the portions of the June 9 and August 4, 2016 meetings described above shall be exempt from the provisions relating to public meetings found in 5 U.S.C. App. 2 sections 10(a)(1) and 10(a)(3). This determination shall be effective from the date of its signing on May 13, 2016.

Man Cho,

Director, Acting, Office of Energy and Environmental Industries.

[FR Doc. 2016–12268 Filed 5–23–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–030]

Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Partial Affirmative Critical Circumstances Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers/exporters of certain cold-rolled steel flat products (cold-rolled steel) from the People's Republic of China (the PRC). The Department also determines critical circumstances exist for certain imports of the subject merchandise from the PRC. The mandatory respondents in this investigation are the Government of the PRC (the GOC), Angang Group Hong Kong Co., Ltd. (Angang Hong Kong), and Benxi Iron and Steel (Group) Special Steel Co., Ltd. (Benxi Iron and Steel). The period of investigation is January 1, 2014, through December 31, 2014.

DATES: *Effective Date:* May 24, 2016.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas or John Corrigan, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3813 or (202) 482–7438, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 2015, the Department published its preliminary affirmative determination that countervailable subsidies are being provided to producers/exporters of certain cold-rolled steel from the PRC in the **Federal Register**.[1] We invited interested parties to comment on our preliminary determination.[2] We only received comments regarding the scope of this investigation. No interested party requested a hearing.

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[1] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Preliminary Affirmative Determination, Preliminary Partial Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 80 FR 79558 (December 22, 2015) (*Preliminary Determination*).

[2] *Id.*, at 79560.

Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. For a full description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix II.

Since the *Preliminary Determination,* eight interested parties (*i.e.,* JFE Steel Corporation, Electrolux Home Products, Inc., Electrolux Home Care Products, Inc., ArcelorMittal USA LLC, AK Steel Corporation, Nucor Corporation, Steel Dynamics Inc., and United States Steel Corporation) commented on the scope of the investigation. The Department reviewed these comments and made no changes. For further discussion, *see* the Final Scope Comments Memorandum.[3] The scope in Appendix II reflects the final scope language, which is unmodified from the scope as it appeared in the *Preliminary Determination.*

Verification

None of the mandatory respondents in the investigation provided information requested by the Department. Hence, no verification was conducted.

Analysis of Comments Received and Changes Since the Preliminary Determination

As discussed above, we received no comments from interested parties pertaining to the *Preliminary Determination.* Therefore, for this final determination, and pursuant to sections 776(a)–(d) of the Tariff Act of 1930, as amended ("the Act"), we continue to rely on facts available for Angang Hong Kong and Benxi Iron and Steel, the two mandatory company respondents, and the GOC, which did not respond to either our primary questionnaires or new subsidy allegation questionnaires.[4] We also continue to rely on facts available for Qian'an Golden Point Trading Co., Ltd. (Qian'an Golden Point), a non-selected exporter that did not respond to the Department's request for clarification with respect to its shipments of subject merchandise to the United States during the POI.[5] Further, we continue to find that Angang Hong Kong, Benxi Iron and Steel, the GOC and Qian'an Golden Point failed to act to the best of their ability and, therefore, are drawing an adverse inference in selecting from among the facts otherwise available to determine whether the benefits provided by programs subject to this investigation constitute countervailable subsidies and calculate the *ad valorem* rates for Angang Hong Kong, Benxi Iron and Steel and Qian'an Golden Point.[6]

For this final determination, we continue to find all programs in this proceeding countervailable—that is, they provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit within the meaning of section 771(5)(B) of the Act, and are specific within the meaning of section 771(5A) of the Act. We are therefore continuing to include these programs in the determination of the AFA rates for Angang Hong Kong, Benxi Iron and Steel, and Qian'an Golden Point.[7] However, in a change from the *Preliminary Determination,* we are updating the AFA rates for two programs. The first of those programs is the Provision of Electricity for Less than Adequate Remuneration, and the second is Import Tariff and Value-Added Tax Exemptions for Foreign Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries. These changes are discussed in the Issues and Decision Memorandum which is incorporated by reference and hereby adopted in this final determination.[8] The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Partial Affirmative Determination of Critical Circumstances, in Part

On October 30, 2015, Petitioners timely filed a critical circumstances allegation, pursuant to section 703(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of cold-rolled steel from the PRC.[9] In accordance with 19 CFR 351.206(c)(2)(i), we issued an affirmative preliminary critical circumstances determination. A discussion of that determination can be found in the Preliminary Decision Memorandum at the section, "Preliminary Determination of Critical Circumstances."[10]

As stated above, the Department did not receive any comments concerning the preliminary determination. Thus, in accordance with section 705(a)(2) of the Act, we continue to find, on the basis of adverse facts available, that critical circumstances exist with respect to Angang Hong Kong, Benxi Iron and Steel and Qian'an Golden Point. We continue to determine that critical circumstances do not exist for all other producers/exporters of cold-rolled steel from the PRC because we do not find massive imports pursuant to 19 CFR 351.206(h)–(i).[11]

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a countervailing duty rate for the individually investigated producers/exporters of the subject merchandise, Angang Hong Kong, Benxi Iron and Steel, and for non-cooperative exporter Qian'an Golden Point. With respect to the all-others rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely in accordance with section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated. In this case, the rates assigned to Angang Hong Kong and Benxi Iron and Steel, are based entirely on facts otherwise available, with adverse inferences, under section 776 of the Act.

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[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Final Scope Comments Decision Memorandum," dated concurrently with this final determination (Final Scope Comments Memorandum).

[4] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the People's Republic of China," dated December 15, 2015 (Preliminary Decision Memorandum) at 9–10; *see also* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the People's Republic of China," dated concurrently with this notice (Issues and Decision Memorandum) at 6–7.

[5] *Id.*

[6] *See* sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).

[7] *See* Preliminary Decision Memorandum at 10–15.

[8] *See* Issues and Decision Memorandum at "Application of AFA: Angang Hong Kong, Benxi Iron and Steel, Qian'an Golden Point, and the GOC."

[9] *See* Letter from Petitioners, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China, Japan, and the Russian Federation—Petitioners' Critical Circumstances Allegation," dated October 30, 2015 (Critical Circumstances Allegation).

[10] *See* Preliminary Decision Memorandum at 17.

[11] *Id.* and Issues and Decision Memorandum at the section "Final Determination of Critical Circumstances, In Part."

All-Others Rate

There is no other information on the record with which to determine an all-others rate. As a result, in accordance with section 705(c)(5)(A)(ii) of the Act, we have established the all-others rate by applying the countervailable subsidy rates for mandatory respondents Angang Hong Kong and Benxi Iron and Steel, which are the same as the rate applied to non-selected exporter Qian'an Golden Point. The final countervailable subsidy rates are summarized in the table below.

Company	Subsidy rate (percent)
Angang Group Hong Kong Co., Ltd	256.44
Benxi Iron and Steel (Group) Special Steel Co., Ltd	256.44
Qian'an Golden Point Trading Co., Ltd	256.44
All-Others	256.44

Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend all entries of cold-rolled steel from the PRC, as described in the "Scope of the Investigation" that were entered, or withdrawn from warehouse, for consumption on or after the date of the publication of the *Preliminary Determination* in the **Federal Register**, and to require a cash deposit for such entries of merchandise.[12] In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after April 20, 2016, but to continue the suspension of liquidation of all entries from December 22, 2015 through April 19, 2016.

Moreover, as a result of our preliminary critical circumstances determination for Angang Hong Kong, Benxi Iron and Steel, and Qian'an Golden Point, pursuant to section 703(e)(2) of the Act, we instructed CBP to suspend liquidation of all entries of subject merchandise from the PRC which were entered or withdrawn from warehouse, for consumption by these companies on or after September 23, 2015, the date 90 days prior to the date of the publication of the *Preliminary Determination* in the **Federal Register**.[13] In accordance with section 703(d) of the Act, we later issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse by Angang Hong Kong, Benxi Iron and Steel, or Qian'an Golden Point, on or after April 20, 2016, but to continue the suspension of liquidation of all entries from September 23, 2015 through April 29, 2016.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

Disclosure

We described the calculations used to determine countervailing duty rates based on adverse facts available in the Issues and Decision Memorandum.[14] Thus, no additional disclosure of calculations is necessary for this final determination.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our final affirmative determination of the provision of countervailable subsidies and final affirmative determination of critical circumstances, in part. Because the final determination in this proceeding is affirmative, in accordance with section 705(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of cold-rolled steel from the PRC, or sales (or the likelihood of sales) for importation, of cold-rolled steel from the PRC. If the ITC determines that such injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue a countervailing duty order directing CBP to assess, upon further instruction by the Department, countervailing duties on appropriate imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APOs in accordance with 19 CFR 351.305. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 16, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Use of Facts Otherwise Available and Adverse Inferences
V. Calculation of the All-Others Rate
VI. Final Determination of Critical Circumstances, In Part
VII. Recommendation

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[12] *See Preliminary Determination,* 80 FR 79559.

[13] *Id.*

[14] *See* Issues and Decision Memorandum at "Application of AFA: Angang Hong Kong, Benxi Iron and Steel, Qian'an Golden Point, and the GOC."

Appendix II

Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) Where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;[15]
- Tool steels;[16]
- Silico-manganese steel;[17]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland.*[18]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.*[19]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070,

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[15] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[16] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[17] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[18] *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 FR 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[19] *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 FR 71,741, 71,741–42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12183 Filed 5–23–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Visiting Committee on Advanced Technology (VCAT or Committee), National Institute of Standards and Technology (NIST), will meet in an open session on Tuesday, June 7, 2016 from 8:30 a.m. to 5:30 p.m. Eastern Time and Wednesday, June 8, 2016 from 10:30 a.m. to 12:30 p.m. Eastern Time. The VCAT is composed of fifteen members appointed by the NIST Director who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

DATES: The VCAT will meet on Tuesday, June 7, 2016 from 8:30 a.m. to 5:30 p.m. Eastern Time and Wednesday, June 8, 2016 from 10:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held in the Portrait Room, Administration Building, at NIST, 100 Bureau Drive, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, Maryland 20899–1060, telephone number 301–975–2667. Ms. Shaw's email address is *stephanie.shaw@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 278 and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

The purpose of this meeting is for the VCAT to review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on major programs at NIST and presentations and discussions on safety at NIST. There will be presentations and discussion about how NIST achieves balance between core intramural research and extramural and convening activities in its Laboratory Programs. NIST's role in the Administration's National Strategic Computing Initiative will also be discussed. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda.

On Wednesday, June 8, approximately one-half hour in the morning will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to VCAT, NIST, 100 Bureau Drive, MS 1060, Gaithersburg, Maryland 20899, via fax at 301–216–0529 or electronically by email to *stephanie.shaw@nist.gov* .

All visitors to the NIST site are required to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Stephanie Shaw by 5:00 p.m. Eastern Time, Tuesday, May 31, 2016. Non-U.S. citizens must submit additional information; please contact Ms. Shaw. Ms. Shaw's email address is *stephanie.shaw@nist.gov* and her phone number is 301–975–2667. For participants attending in person, please note that federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Ms. Shaw at 301–975–2667 or visit: *http://nist.gov/public_affairs/visitor/* .

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2016–12293 Filed 5–20–16; 11:15 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE642

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council's) Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public meeting.

DATES: The meeting will be held on Wednesday, June 22, 2016, from 10 a.m. until 4:30 p.m.

ADDRESSES: The meeting will be held at the Double Tree by Hilton Baltimore—BWI Airport, 890 Elkridge Landing Road, Linthicum, Maryland 21090; telephone: (410) 859–8400.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel (AP) will meet jointly with the Atlantic States Marine Fisheries Commission's (ASMFC's) Summer Flounder, Scup, and Black Sea Bass Advisory Panel. The purpose of this meeting is to discuss recent performance of the commercial and recreational fisheries for summer flounder, scup, and black sea bass, and develop annual Fishery Performance Reports for these fisheries. The Council and the ASMFC will consider the Fishery Performance Reports later in 2016 when reviewing previously implemented multi-year fishery specifications (*i.e.,* catch and landings limits and management measures) for 2017. The AP will also discuss summer flounder management alternatives under development for the Council and ASMFC's ongoing Comprehensive Summer Flounder Amendment.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 19, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–12206 Filed 5–23–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE641

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Stock ID Work Group Meeting for Atlantic Blueline Tilefish (Caulolatilus microps)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 50 Stock Identification (ID) Work Group Meeting for Atlantic *blueline tilefish.*

SUMMARY: The SEDAR 50 assessment(s) of the Atlantic stock(s) of *blueline tilefish* will consist of a series of workshops and Webinars: Stock ID Work Group Meeting; Data Workshop; Assessment Workshop and Webinars; and a Review Workshop. For agenda details, see **SUPPLEMENTARY INFORMATION.**

DATES: The meeting will begin at 1 p.m. on Tuesday, June 28, 2016, and end at 3 p.m. on Thursday, June 30, 2016. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice. Additional SEDAR 50 workshops and Webinar dates and times will publish in a subsequent issue in the **Federal Register.**

ADDRESSES: The meeting will be held at the Doubletree by Hilton Raleigh Brownstone, 1707 Hillsborough Street, Raleigh, NC 27605; phone 919–828–0811. The meeting will also be broadcast via Webinar so that members of the public can observe the meeting. Those interested in observing the meeting via Webinar should contact Julia Byrd at SEDAR to request an invitation providing Webinar access information. Please request Webinar invitations at least 24 hours in advance of the meeting.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; Web site: *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone (843) 571–4366; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION:

Agenda

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing Webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Stock ID Work Group meeting are as follows:

1. Participants will use review genetic studies, growth patterns, existing stock definitions, prior SEDAR stock ID recommendations, and any other relevant information on *blueline tilefish* stock structure.

2. Participants will make recommendations on biological stock structure and define the unit stock or stocks to be addressed through this assessment.

3. Participants will provide recommendations to address Council management jurisdictions, to support management of the stock or stocks, and specification of management benchmarks and fishing levels by

Council jurisdiction in a manner consistent with the productivity measures of the stock.

4. Participants will document work group discussion and recommendations through a Data Workshop working paper for SEDAR 50.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC at least ten (10) business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 19, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–12205 Filed 5–23–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE643

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a listening session via webinar regarding the 2017 recreational specifications for blueline tilefish off the Mid-Atlantic (from Virginia north).

DATES: The meeting will be held Thursday, June 9, 2016 at 7 p.m.

ADDRESSES: The meeting will be held via webinar with a telephone-only audio connection option: *http://mafmc.adobeconnect.com/bltls/.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* will also have details on webinar access and any background materials.

SUPPLEMENTARY INFORMATION: In April 2016, the Council recommended 2017 recreational measures for blueline tilefish off the Mid-Atlantic with an open season from May 1 to October 31 and bag limits of 7 fish per person for inspected for-hire vessels, 5 fish per person for uninspected for-hire vessels, and 3 fish per person for private vessels. Based on concerns of constituents regarding this recommendation, the Council has scheduled time at its June 13–16, 2016 meeting to potentially reconsider these measures. To provide additional opportunity for the public to comment on this issue, the Council will hold a webinar-based listening session. During the listening session Council staff will summarize the rationale for the original recommendation, answer questions, and take comments on possible alternatives, which will be provided to the Council. Telephone connection information is provided when individuals enter the webinar, or individuals can call (800) 832–0736 and enter *7833942# to access the audio portion of the webinar. Anyone not familiar with connecting to Council webinars and wishing to get connection assistance should contact Jason Didden at *jdidden@mafmc.org* or 302–526–5254 at least a day before the webinar.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 19, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–12207 Filed 5–23–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Board of Visitors of the U.S. Air Force Academy Notice of Meeting; Amendment

AGENCY: Board of Visitors of the U.S. Air Force Academy.

ACTION: Amended meeting notice (location change).

SUMMARY: In accordance with 10 U.S.C. 9355, the Board of Visitors (BoV) of the U.S. Air Force Academy will hold a meeting at the Cannon Building, Room 340, Washington, DC, on June 9, 2016. On Thursday, the meeting will begin at 8:30 a.m. and will conclude at 3:45p.m. Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Board of Visitors of the U.S. Air Force Academy is unable to provide public notification, as required by 41 CFR 102–3.150(a), concerning the change to the meeting location previously announced in **Federal Register**, 81 FR 30521 on Tuesday, May 17, 2016. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement. The purpose of this meeting is to review morale and discipline, social climate, strategic communications, and other matters relating to the Academy. Specific topics for this meeting include a Superintendent's Update; USAFA Diversity Update; and Strategic Communications. Public attendance at this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force address detailed below at any time. However, if a written statement is not received at least 10 calendar days before the first day of the meeting which is the subject of this notice, then it may not be

provided to or considered by the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairman and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. If after review of timely submitted written comments and the BoV Chairman and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present the issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairman to allow specific personnel to make oral presentations before the BoV. In accordance with 41 CFR Section 102–3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairman. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during the open portions of this BoV meeting shall be made available upon request.

FOR FURTHER INFORMATION CONTACT: For additional information or to attend this BoV meeting, contact Lt Col Veronica Senia, Chief, Officer Accessions and Training, AF/A1PT, 1040 Air Force Pentagon, Washington, DC 20330, (703) 692–5577, *Veronica.V.Senia.mil@mail.mil.*

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2016–12165 Filed 5–23–16; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2015–HA–0008]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 25, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Health Agency, Performance Evaluation & Transition Management Branch, ATTN: Ann Fazzini, 16401 E. Centretech Parkway, Aurora, CO 80011–9066, telephone 303–676–3613.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Health Insurance Claim Form, UB–04 CMS.1450, OMB Control Number 0720–0013.

Needs and Uses: The information collection requirement is necessary for a medical institution to claim benefits under the Defense Health Program, TRICARE which includes the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received the care, and that the provider is authorized to receive TRICARE/CHAMPUS payments. The form will be used by TRICARE/CHAMPUS and its contractors to determine the amount of benefits to be paid by TRICARE/CHAMPUS to institutional providers.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 135,000.

Number of Respondents: 540,000.

Responses per Respondent: 1.

Annual Responses: 540,000.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

This collection instrument is for use by medical institutions filing for reimbursement with the Defense Health Program, TRICARE, which includes the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS). TRICARE/CHAMPUS is a health benefits entitlement program for the dependents of active duty members of the Uniformed Services, and deceased sponsors, retirees and their dependents, of the Department of Homeland Security (Coast Guard) sponsors and certain North Atlantic Treaty Organization, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. Use of the UB–04/CMS–1450 continues TRICARE/CHAMPUS commitments to use the national standard claim form for reimbursement of medical services/supplies provided by institutional providers.

Dated: May 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–12217 Filed 5–23–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0062]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Acquisition Technology and Logistics (Program Support), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Acquisition Technology and Logistics (Program Support) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 25, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: Mailbox 24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Manpower Data Center, Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT–ES) Program Management Office, ATTN: Samuel Gregson, 4800 Mark Center Drive, Suite 04E25, Alexandria, VA 22350, or call SPOT–ES PMO at 571–372–1139.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT–ES); OMB Control Number 0704–0460.

Needs and Uses: The information collection requirement is necessary to comply with section 861 of Public Law 110–181 and DoD Instruction 3020.41, "Operational Contract Support" and other appropriate policy, Memoranda of Understanding, and regulations. The Department of Defense, the Department of State (DoS), and the United States Agency for International Development (USAID) require that Government contract companies enter their employee's data into the Synchronized Predeployment and Operational Tracker (SPOT) System before contractors are deployed outside of the United States. SPOT is also used during Homeland Defense and Defense Support of Civil Authority Operations in the United States. Any persons who choose not to have data collected will not be entitled to employment opportunities which require this data to be collected.

Affected Public: Business or other for profit.

Annual Burden Hours: 46,760.

Number of Respondents: 1670.

Responses per Respondent: 56.

Annual Responses: 93,520.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Data collection on contractors is a condition of DoD contracts when DFARS 252.225–7040, *Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States,* is incorporated. This clause applies when contractors are authorized to accompany U.S. Armed Forces deployed outside of the United States in contingency, humanitarian or peacekeeping operations or other military operations/exercises when designated by the Combatant Commander.

SPOT is the authorized system for contractor accountability and the only system that provides the Letter of Authorization (LOA) which is required for access to Authorized Government Services (AGS) which are assigned on the LOA for each individual contractor IAW their contract by the responsible Contracting Officer. If the data is not collected to generate the LOA, contractors would not be able to obtain AGS in their deployed locations, including access to dining facilities—limiting their ability to obtain critical life support.

Dated: May 18, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–12130 Filed 5–23–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Federal Need Analysis Methodology for the 2017–18 Award Year—Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, William D. Ford Federal Direct Loan, Iraq and Afghanistan Service Grant and TEACH Grant Programs

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.063; 84.038; 84.033; 84.007; 84.268; 84.408; 84.379.

SUMMARY: The Secretary announces the annual updates to the tables used in the statutory Federal Need Analysis Methodology that determines a student's expected family contribution (EFC) for award year 2017–18 for these student financial aid programs. The intent of this notice is to alert the financial aid community and the broader public to these required annual updates used in the determination of student aid eligibility.

FOR FURTHER INFORMATION CONTACT: Marya Dennis, U.S. Department of Education, room 63G2, Union Center Plaza, 830 First Street NE., Washington, DC 20202–5454. Telephone: (202) 377–3385.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Part F of title IV of the Higher Education Act of 1965, as amended (HEA), specifies the criteria, data elements, calculations, and tables the Department of Education (Department) uses in the Federal Need Analysis Methodology to determine the EFC.

Section 478 of the HEA requires the Secretary to annually update the following four tables for price inflation—the Income Protection Allowance (IPA), the Adjusted Net Worth (NW) of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment

Schedules and Rates. The updates are based, in general, upon increases in the Consumer Price Index (CPI).

For award year 2017–18, the Secretary is charged with updating the IPA for parents of dependent students, adjusted NW of a business or farm, the education savings and asset protection allowance, and the assessment schedules and rates to account for inflation that took place between December 2015 and December 2016. However, because the Secretary must publish these tables before December 2016, the increases in the tables must be based on a percentage equal to the estimated percentage increase in the Consumer Price Index for All Urban Consumers (CPI–U) for 2016. The Secretary must also account for any under- or over-estimation of inflation for the preceding year.

In developing the table values for the 2016–17 award year, the Secretary assumed a 2.5 percent increase in the CPI–U for the period December 2014 through December 2015. Actual inflation for this time period was .7 percent. The Secretary estimates that the increase in the CPI–U for the period December 2015 through December 2016 will be 2.1 percent.

Additionally, section 601 of the College Cost Reduction and Access Act of 2007 (CCRAA, Pub. L. 110–84) amended sections 475 through 478 of the HEA affecting the IPA tables for the 2009–10 through 2012–13 award years and required the Department to use a percentage of the estimated CPI to update the table in subsequent years. These changes to the IPA impact dependent students, as well as independent students with dependents other than a spouse and independent students without dependents other than a spouse. This notice includes the new 2017–18 award year values for the IPA tables, which reflect the CCRAA amendments. The updated tables are in sections 1 (Income Protection Allowance), 2 (Adjusted Net Worth of a Business or Farm), and 4 (Assessment Schedules and Rates) of this notice.

As provided for in section 478(d) of the HEA, the Secretary must also revise the education savings and asset protection allowances for each award year. The Education Savings and Asset Protection Allowance table for award year 2017–18 has been updated in section 3 of this notice.

Section 478(h) of the HEA also requires the Secretary to increase the amount specified for the employment expense allowance, adjusted for inflation. This calculation is based on increases in the Bureau of Labor Statistics' marginal costs budget for a two-worker family compared to a one-worker family. The items covered by this calculation are: food away from home, apparel, transportation, and household furnishings and operations. The Employment Expense Allowance table for award year 2017–18 has been updated in section 5 of this notice.

The HEA requires the following annual updates:

1. *Income Protection Allowance.* This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. The allowance varies by family size. The IPA for the dependent student is $6,420. The IPAs for parents of dependent students for award year 2017–18 are as follows:

PARENTS OF DEPENDENT STUDENTS

Family size	Number in college				
	1	2	3	4	5
2	$17,910	$14,840			
3	22,300	19,250	$16,190		
4	27,540	24,480	21,430	$18,360	
5	32,490	29,430	26,380	23,320	$20,270
6	38,010	34,940	31,900	28,830	25,790

For each additional family member add $4,290. For each additional college student subtract $3,050.

The IPAs for independent students with dependents other than a spouse for award year 2017–18 are as follows:

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

Family size	Number in college				
	1	2	3	4	5
2	$25,280	$20,960			
3	31,480	27,180	$22,860		
4	38,870	34,560	30,260	$25,930	
5	45,870	41,540	37,240	32,920	$28,620
6	53,640	49,330	45,040	40,690	36,400

For each additional family member add $6,060. For each additional college student subtract $4,300.

The IPAs for single independent students and independent students without dependents other than a spouse for award year 2017–18 are as follows:

Marital status	Number in college	IPA
Single	1	$9,980
Married	2	9,980
Married	1	16,010

2. *Adjusted Net Worth of a Business or Farm.* A portion of the full NW (assets less debts) of a business or farm is excluded from the calculation of an expected contribution because (1) the income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets.

The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the NW of a business or farm is	Then the adjusted NW is
Less than $1	$0.
$1 to $130,000	$0 + 40% of NW.
$130,001 to $385,000	$52,000 + 50% of NW over $130,000.
$385,001 to $640,000	$179,500 + 60% of NW over $385,000.
$640,001 or more	$332,500 + 100% of NW over $640,000.

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of NW (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables: one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

PARENTS OF DEPENDENT STUDENTS

If the age of the older parent is	And they are Married	And they are Single
	Then the education savings and asset protection allowance is	
26	1,100	600
27	2,200	1,300
28	3,400	1,900
29	4,500	2,600
30	5,600	3,200
31	6,700	3,800
32	7,800	4,500
33	9,000	5,100
34	10,100	5,800
35	11,200	6,400
36	12,300	7,000
37	13,400	7,700
38	14,600	8,300
39	15,700	9,000
40	16,800	9,600
41	17,100	9,800
42	17,500	10,000
43	17,900	10,200
44	18,400	10,500
45	18,800	10,700
46	19,300	10,900
47	19,800	11,200
48	20,200	11,400
49	20,700	11,700
50	21,200	12,000
51	21,700	12,200
52	22,400	12,500
53	22,900	12,800
54	23,600	13,200
55	24,100	13,500
56	24,800	13,800
57	25,600	14,100
58	26,200	14,500
59	26,900	14,900
60	27,700	15,200
61	28,500	15,600
62	29,300	16,000
63	30,100	16,400
64	31,100	16,900
65 or older	31,900	17,300

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And they are Married	And they are Single
	Then the education savings and asset protection allowance is	
25 or less	0	0
26	1,100	600
27	2,200	1,300
28	3,400	1,900
29	4,500	2,600
30	5,600	3,200
31	6,700	3,800
32	7,800	4,500
33	9,000	5,100
34	10,100	5,800
35	11,200	6,400
36	12,300	7,000
37	13,400	7,700
38	14,600	8,300
39	15,700	9,000
40	16,800	9,600
41	17,100	9,800
42	17,500	10,000
43	17,900	10,200
44	18,400	10,500
45	18,800	10,700
46	19,300	10,900
47	19,800	11,200
48	20,200	11,400
49	20,700	11,700
50	21,200	12,000
51	21,700	12,200
52	22,400	12,500
53	22,900	12,800
54	23,600	13,200
55	24,100	13,500
56	24,800	13,800
57	25,600	14,100
58	26,200	14,500
59	26,900	14,900
60	27,700	15,200
61	28,500	15,600
62	29,300	16,000
63	30,100	16,400
64	31,100	16,900
65 or older	31,900	17,300

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And they are Married	And they are Single
	Then the education savings and asset protection allowance is	
25 or less	0	0
26	1,100	600
27	2,200	1,300
28	3,400	1,900
29	4,500	2,600
30	5,600	3,200
31	6,700	3,800
32	7,800	4,500
33	9,000	5,100
34	10,100	5,800
35	11,200	6,400
36	12,300	7,000
37	13,400	7,700
38	14,600	8,300
39	15,700	9,000
40	16,800	9,600
41	17,100	9,800
42	17,500	10,000
43	17,900	10,200
44	18,400	10,500
45	18,800	10,700
46	19,300	10,900
47	19,800	11,200
48	20,200	11,400
49	20,700	11,700
50	21,200	12,000
51	21,700	12,200
52	22,400	12,500
53	22,900	12,800
54	23,600	13,200
55	24,100	13,500
56	24,800	13,800
57	25,600	14,100
58	26,200	14,500
59	26,900	14,900
60	27,700	15,200

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE—Continued

If the age of the student is	And they are	
	Married	Single
	Then the education savings and asset protection allowance is	
61	28,500	15,600
62	29,300	16,000
63	30,100	16,400
64	31,100	16,900
65 or older	31,900	17,300

4. *Assessment Schedules and Rates.* Two schedules that are subject to updates—one for parents of dependent students and one for independent students with dependents other than a spouse—are used to determine the EFC from family financial resources toward educational expenses. For dependent students, the EFC is derived from an assessment of the parents' adjusted available income (AAI). For independent students with dependents other than a spouse, the EFC is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

The parents' contribution for a dependent student is computed according to the following schedule:

If AAI is	Then the Contribution is
Less than −$3,409	−$750.
−$3,409 to $16,000	22% of AAI.
$16,001 to $20,100	$3,520 + 25% of AAI over $16,000.
$20,101 to $24,200	$4,545 + 29% of AAI over $20,100.
$24,201 to $28,300	$5,734 + 34% of AAI over $24,200.
$28,301 to $32,300	$7,128 + 40% of AAI over $28,300.
$32,301 or more	$8,728 + 47% of AAI over $32,300.

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

If AAI is	Then the Contribution is
Less than −$3,409	−$750.
−$3,409 to $16,000	22% of AAI.
$16,001 to $20,100	$3,520 + 25% of AAI over $16,000.
$20,101 to $24,200	$4,545 + 29% of AAI over $20,100.
$24,201 to $28,300	$5,734 + 34% of AAI over $24,200.
$28,301 to $32,300	$7,128 + 40% of AAI over $28,300.
$32,301 or more	$8,728 + 47% of AAI over $32,300.

5. *Employment Expense Allowance.* This allowance for employment-related expenses—which is used for the parents of dependent students and for married independent students—recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based on the marginal differences in costs for a two-worker family compared to a one-worker family. The items covered by these additional expenses are: Food away from home, apparel, transportation, and household furnishings and operations.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $4,000 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* The allowance for State and other taxes protects a portion of parents' and students' incomes from being considered available for postsecondary educational expenses. There are four categories for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse. Section 478(g) of the HEA directs the Secretary to update the tables for State and other taxes after reviewing the Statistics of Income file data maintained by the Internal Revenue Service.

State	Parents of dependents and independents with dependents other than a spouse		Dependents and independents without dependents other than a spouse
	Percent of total income		
	Under $15,000	$15,000 & up	All
Alabama	3	2	2
Alaska	2	1	0
Arizona	4	3	2
Arkansas	4	3	3
California	8	7	6

State	Parents of dependents and independents with dependents other than a spouse		Dependents and independents without dependents other than a spouse
	Percent of total income		
	Under $15,000	$15,000 & up	All
Colorado	4	3	3
Connecticut	9	8	5
Delaware	5	4	3
District of Columbia	8	7	6
Florida	3	2	1
Georgia	5	4	3
Hawaii	5	4	4
Idaho	5	4	3
Illinois	6	5	3
Indiana	4	3	3
Iowa	5	4	3
Kansas	4	3	3
Kentucky	5	4	4
Louisiana	3	2	2
Maine	6	5	4
Maryland	8	7	6
Massachusetts	7	6	4
Michigan	5	4	3
Minnesota	6	5	5
Mississippi	3	2	2
Missouri	5	4	3
Montana	5	4	3
Nebraska	5	4	3
Nevada	2	1	1
New Hampshire	5	4	1
New Jersey	9	8	5
New Mexico	3	2	2
New York	10	9	7
North Carolina	5	4	4
North Dakota	2	1	1
Ohio	5	4	3
Oklahoma	3	2	2
Oregon	7	6	5
Pennsylvania	5	4	3
Rhode Island	7	6	4
South Carolina	5	4	3
South Dakota	2	1	1
Tennessee	2	1	1
Texas	3	2	1
Utah	5	4	3
Vermont	6	5	3
Virginia	6	5	4
Washington	3	2	1
West Virginia	3	2	2
Wisconsin	7	6	4
Wyoming	2	1	1
Other	2	1	1

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT** in this notice.

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Program Authority: 20 U.S.C. 1087rr.

Dated: May 19, 2016.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2016–12250 Filed 5–23–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Orders Granting Authority To Import and Export Natural Gas, To Import and Export Liquefied Natural Gas, Denying Request for Rehearing, and Granting Motion for Extension of Time To File During April 2016

	FE Docket Nos.
DOMINION COVE POINT LNG, LP	11–128–LNG
FLINT HILLS RESOURCES, LP	15–168–LNG
MORGAN STANLEY CAPITAL GROUP, INC	16–42–LNG
POWER CITY PARTNERS, L.P	16–41–NG
IGI RESOURCES, INC	16–46–NG
EMPIRE NATURAL GAS CORPORATION	16–48–NG
SOCCO, INC	16–44–NG
JM & RAL ENERGY, INC	16–51–NG
SEMPRA LNG MARKETING, LLC	16–52–LNG
TOURMALINE OIL MARKETING CORP	16–43–NG
SEQUENT ENERGY MANAGEMENT, L.P	16–40–NG
JORDAN COVE ENERGY PROJECT L.P	12–32–LNG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during April 2016, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), denying request for rehearing, and granting motion for extension of time to file. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://energy.gov/fe/listing-doefe-authorizationsorders-issued-2016.* They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 16, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

3331–B	04/18/16	11–128–LNG	Dominion Cove Point LNG, LP.	Opinion and Order denying request for rehearing of Order granting Long-term Multi-contract authority to export LNG by vessel from the Cove Point LNG Terminal in Calvert County, Maryland, to Non-free Trade Agreement Nations.
3809	04/13/16	15–168–LNG	Flint Hills Resources, LP	Order granting Long-term, Multi-contract authority to export LNG in ISO containers or in Bulk Loaded at the Stabilis LNG Eagle Ford, LLC Facility in George West, Texas, and exported by vessel to Free Trade Agreement Nations.
3810	04/13/16	16–42–LNG	Morgan Stanley Capital Group, Inc.	Order granting blanket authority to import LNG from various international sources by vessel.
3811	04/13/16	16–41–NG	Power City Partners, L.P	Order granting blanket authority to import natural gas from Canada.
3812	04/14/16	16–46–NG	IGI Resources, Inc.	Order granting blanket authority to import/export natural gas from/to Canada.
3813	04/14/16	16–48–NG	Empire Natural Gas Corporation.	Order granting blanket authority to import/export natural gas from/to Canada.
3814	04/14/16	16–44–NG	Socco, Inc	Order granting blanket authority to import natural gas from Canada.
3815	04/28/16	16–51–NG	JM & RAL Energy, Inc	Order granting blanket authority to export natural gas to Mexico.
3816	04/28/16	16–52–LNG	Sempra LNG Marketing, LLC	Order granting blanket authority to import LNG from various international sources by vessel.
3817	04/28/16	16–43–NG	Tourmaline Oil Marketing Corp.	Order granting blanket authority to import natural gas from Canada.
3818	04/29/16	16–40–NG	Sequent Energy Management, L.P.	Order granting blanket authority to import/export natural gas from/to Canada.
Procedural Order.	04/01/16	12–32–LNG	Jordan Cove Energy Project L.P.	Order granting Motion for Extension of Time to File Answers to Motions to Intervene and Protests.

[FR Doc. 2016–12281 Filed 5–23–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–381–A]

Application To Export Electric Energy; E–T Global Energy, LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: E–T Global Energy, LLC (Applicant or E–T Global) has applied to renew its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before June 23, 2016.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C.824a(e)).

On June 10, 2011, DOE issued Order No. EA–381 to E–T Global, which authorized the Applicant to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. That authority expires on June 10, 2016. On May 13, 2016, E–T Global filed an application with DOE for renewal of the export authority contained in Order No. EA–381 for an additional five-year term.

In its application, E–T Global states that it does not own or operate any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that E–T Global proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning E–T Global's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–381–A. An additional copy is to be provided directly to Rebecca DuPont, E–T Global Energy, LLC, 2121 Sage Road, Suite 270, Houston, TX 77056.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on May 18, 2016.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–12283 Filed 5–23–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on May 31 through June 1, 2016, at the headquarters of the IEA in Paris, France in connection with a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) on May 31, 2016, in connection with a meeting of the SEQ on that day and on June 1, 2016.

DATES: May 31 through June 1, 2016.

ADDRESSES: 9, rue de la Fédération, Paris, France.

FOR FURTHER INFORMATION CONTACT: Thomas Reilly, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–5000.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meetings is provided:

Meetings of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on May 31, 2016, commencing at 2:00 p.m.. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Markets (SOM) on May 31, to be held at the same location commencing at 2:00 p.m. The IAB will also hold a preparatory meeting among company representatives at the same location at 8:30 a.m. on June 1. The agenda for this preparatory meeting is to review the agenda for the SEQ meeting. The SEQ meeting will commence, at the same location, on June 1, 2016 at 9:30 a.m.

The agenda of the joint meeting of the SEQ and SOM is under the control of the SEQ and SOM. It is expected that the SEQ and SOM will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 17 March 2106 Joint Session
3. Reports on Recent Oil Market and Policy Developments in IEA Countries
4. The Current Oil Market Situation "Presentation of OMR MAY 2106" + Questions & Answers
5. Presentation from IEA Division and discussion (TBC)
6. Presentation from External Speaker and discussion, on "Oil Pricing Issues"
7. Other Business

—Tentative schedule of upcoming SEQ and SOM meetings for 2016:

—27–29 September 2016

The agenda of the SEQ meeting on June 1, 2106 is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 147th Meeting
3. Status of Compliance with IEP Agreement Stockholding Obligations
4. Australian Compliance Update
5. Bilateral Stockholding in non-OECD Countries—progress report
6. Association—"Oil Umbrella" concept
7. ERR Programme
8. Emergency Response Review of the Netherlands
9. Mid-term Review of Italy
10. Industry Advisory Board Update
11. Emergency Response Review of France
12. Mid-Term Review of Estonia
13. Update on ERE8 Arrangements
14. Mexican Accession
15. Outreach Activities
16. Oral Reports by Administrations
17. Other Business

Schedule of SEQ and SOM Meetings, 2016 provisional dates: 27–29 September

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Issued in Washington, DC May 18, 2016.

Thomas Reilly,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 2016–12280 Filed 5–23–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1724–000]

Paulding Wind Farm III LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Paulding Wind Farm III LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 7, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 18, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12204 Filed 5–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–64–000.
Applicants: Southwestern Public Service Company, Xcel Energy Southwest Transmission Company, LLC.
Description: Amendment to January 28, 2016 Joint Application for Authorization for Disposition of Jurisdictional Transmission Facilities of Southwestern Public Service Company, et al.
Filed Date: 5/17/16.
Accession Number: 20160517–5183.
Comments Due: 5 p.m. ET 6/7/16.

Docket Numbers: EC16–120–000.
Applicants: Otter Tail Power Company.
Description: Request For Approvals Pursuant To Section 203 Of The Federal Power Act.
Filed Date: 5/17/16.
Accession Number: 20160517–5185.
Comments Due: 5 p.m. ET 6/7/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–102–000.
Applicants: Aurora Generation, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/18/16.
Accession Number: 20160518–5067.
Comments Due: 5 p.m. ET 6/8/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1825–006.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2016–05–17 Petition for Ltd Waiver re RSI—Request Short Comment Period to be effective N/A.
Filed Date: 5/17/16.
Accession Number: 20160517–5128.
Comments Due: 5 p.m. ET 5/24/16.

Docket Numbers: ER16–897–004.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2016–05–17 Petition for Ltd Waiver re CPM—Request Short Comment Period to be effective N/A.
Filed Date: 5/17/16.
Accession Number: 20160517–5134.
Comments Due: 5 p.m. ET 5/24/16.

Docket Numbers: ER16–1725–000.

Applicants: Southern California Edison Company.

Description: Section 205(d) Rate Filing: 2016 Revised Added Facilities Rate under WDAT—Filing No. 13 to be effective 1/1/2016.

Filed Date: 5/18/16.

Accession Number: 20160518–5000.

Comments Due: 5 p.m. ET 6/8/16.

Docket Numbers: ER16–1726–000.

Applicants: Simpson Tacoma Kraft Company, LLC.

Description: Notice of cancelation of market based tariff of Simpson Tacoma Kraft Co. LLC.

Filed Date: 5/18/16.

Accession Number: 20160518–5027.

Comments Due: 5 p.m. ET 6/8/16.

Docket Numbers: ER16–1727–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Original WMPA SA No. 4469, Queue No. AA1–106 to be effective 5/3/2016.

Filed Date: 5/18/16.

Accession Number: 20160518–5055.

Comments Due: 5 p.m. ET 6/8/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 18, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12198 Filed 5–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1720–000]

Invenergy Energy Management LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Invenergy Energy Management LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 7, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 18, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12203 Filed 5–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–941–000.

Applicants: Enable Gas Transmission, LLC.

Description: Section 4(d) Rate Filing: Negotiated Rate Filing—Black Hills 3771—name change to be effective 3/1/2016.

Filed Date: 5/11/16.

Accession Number: 20160511–5202.

Comments Due: 5 p.m. ET 5/23/16.

Docket Numbers: RP16–942–000.

Applicants: Texas Eastern Transmission, LP.

Description: Compliance filing TETLP Request for Waiver of OFO Penalty Provisions.

Filed Date: 5/11/16.

Accession Number: 20160511–5245.

Comments Due: 5 p.m. ET 5/23/16.

Docket Numbers: RP16–943–000.

Applicants: Vector Pipeline L.P.

Description: Section 4(d) Rate Filing: Negotiated Rate Filing—EGD & Peoples to be effective 6/1/2016.

Filed Date: 5/12/16.

Accession Number: 20160512–5034.

Comments Due: 5 p.m. ET 5/24/16.

Docket Numbers: RP16–944–000.

Applicants: Texas Eastern Transmission, LP.

Description: Section 4(d) Rate Filing: May 2016 Negotiated Rate and Non-conforming Agreements Cleanup to be effective 6/12/2016.

Filed Date: 5/12/16.

Accession Number: 20160512–5066.

Comments Due: 5 p.m. ET 5/24/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–548–002.
Applicants: Trans-Union Interstate Pipeline, L.P.
Description: Compliance filing Compliance Filing to Docket RP16–548 to be effective 4/1/2016.
Filed Date: 5/11/16.
Accession Number: 20160511–5120.
Comments Due: 5 p.m. ET 5/23/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 12, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12201 Filed 5–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR16–52–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: Tariff filing per 284.123(b)(1)/.: COH SOC 4–29–2016 to be effective 4/29/2016; Filing Type: 980.
Filed Date: 5/5/2016.
Accession Number: 201605055099.
Comments/Protests Due: 5 p.m. ET 5/26/16.

Docket Numbers: RP16–936–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Section 4(d) Rate Filing: Remove Expired Agreements to be effective 6/9/2016.
Filed Date: 5/9/16.
Accession Number: 20160509–5123.
Comments Due: 5 p.m. ET 5/23/16.

Docket Numbers: RP16–937–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Section 4(d) Rate Filing: Invenergy Nelson to be effective 6/1/2016.
Filed Date: 5/9/16.
Accession Number: 20160509–5127.
Comments Due: 5 p.m. ET 5/23/16.

Docket Numbers: RP16–938–000.
Applicants: Tallgrass Interstate Gas Transmission, L.
Description: Section 4(d) Rate Filing: Errata to Motion Filing for Rate Case to be effective 5/1/2016.
Filed Date: 5/10/16.
Accession Number: 20160510–5001.
Comments Due: 5 p.m. ET 5/23/16.

Docket Numbers: RP16–939–000.
Applicants: SWN Energy Services Company, LLC,HG Energy, LLC.
Description: Joint Petition of SWN Energy Services Company, LLC, and HG Energy, LLC for Temporary Waivers of Capacity Release Regulations and Policies, and Request for Shortened Comment Period and Expedited Treatment.
Filed Date: 5/9/16.
Accession Number: 20160509–5170.
Comments Due: 5 p.m. ET 5/16/16.

Docket Numbers: RP16–940–000.
Applicants: DBM Pipeline, LLC.
Description: Section 4(d) Rate Filing: Negotiated Rate Filing to be effective 5/11/2016.
Filed Date: 5/10/16.
Accession Number: 20160510–5158.
Comments Due: 5 p.m. ET 5/23/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–137–008.
Applicants: Tallgrass Interstate Gas Transmission, L.
Description: Compliance filing Errata to Motion Filing RP16–137 to be effective 5/1/2016.
Filed Date: 5/10/16.
Accession Number: 20160510–5128.
Comments Due: 5 p.m. ET 5/23/16.

Docket Numbers: RP16–518–002.
Applicants: DBM Pipeline, LLC.
Description: Compliance filing Errata to Compliance Filing to be effective 4/1/2016.
Filed Date: 5/10/16.
Accession Number: 20160510–5029.
Comments Due: 5 p.m. ET 5/23/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 11, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12200 Filed 5–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1637–000]

UIL Distributed Resources, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of UIL Distributed Resources, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 6, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12208 Filed 5–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1652–000]

LifeEnergy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of LifeEnergy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 6, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12209 Filed 5–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–99–000.
Applicants: Lindahl Wind Project, LLC.
Description: Notice of Self-Certification for Exempt Wholesale Generator Status for Lindahl Wind Project, LLC.
Filed Date: 5/16/16.
Accession Number: 20160516–5263.
Comments Due: 5 p.m. ET 6/6/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1827–005.
Applicants: Cleco Power LLC.
Description: Notice of Non-Material Change in Status of Cleco Power LLC.
Filed Date: 5/13/16.
Accession Number: 20160513–5264.
Comments Due: 5 p.m. ET 6/3/16.

Docket Numbers: ER10–1910–011; ER10–1911–011
Applicants: Duquesne Light Company, Duquesne Power, LLC.
Description: Notice of Change in Status of Duquesne Light Company and Duquesne Power, LLC et al.
Filed Date: 5/13/16.
Accession Number: 20160513–5224.
Comments Due: 5 p.m. ET 6/3/16.

Docket Numbers: ER11–3460–009; ER12–673–009; ER12–672–009; ER10–1533–012; ER10–2374–011; ER12–674–009; ER12–670–009; ER12–1301–007.
Applicants: Bayonne Energy Center, LLC, Brea Generation LLC, Brea Power II, LLC, Macquarie Energy LLC, Puget Sound Energy, Inc., Rhode Island Engine Genco, LLC, Rhode Island LFG Genco, LLC, Zone J Tolling Co., LLC.
Description: Notice of Non-Material Change in Status of Bayonne Energy Center, LLC, et al.
Filed Date: 5/13/16.
Accession Number: 20160513–5232.
Comments Due: 5 p.m. ET 6/3/16.

Docket Numbers: ER15–2205–004.
Applicants: Prairie Breeze Wind Energy III LLC.
Description: Notification of Change in Facts of Prairie Breeze Wind Energy III LLC.
Filed Date: 5/16/16.
Accession Number: 20160516–5274.
Comments Due: 5 p.m. ET 6/6/16.

Docket Numbers: ER16–946–001.
Applicants: ISO New England Inc.
Description: Compliance filing: Interconnection Process Improvements Compliance Filing to be effective 4/17/2016.
Filed Date: 5/16/16.
Accession Number: 20160516–5206.
Comments Due: 5 p.m. ET 6/6/16.

Docket Numbers: ER16–994–001.
Applicants: Pacific Gas and Electric Company.
Description: Tariff Amendment: Response to Deficiency Letter for the Amendment to the Western IA (SA 59) to be effective 4/1/2016.
Filed Date: 5/16/16.
Accession Number: 20160516–5309.
Comments Due: 5 p.m. ET 6/6/16.

Docket Numbers: ER16–1704–000.
Applicants: Iron Springs Solar, LLC.
Description: Compliance filing: Comp. Filing—Amendment to MBR Tariff Limits. and Exemptions to be effective 7/12/2016.

Filed Date: 5/13/16.
Accession Number: 20160513–5213.
Comments Due: 5 p.m. ET 6/3/16.

Docket Numbers: ER16–1705–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3940, Queue No. Y3–054 to be effective 5/16/2016.
Filed Date: 5/16/16.
Accession Number: 20160516–5167.
Comments Due: 5 p.m. ET 6/6/16.

Docket Numbers: ER16–1706–000.
Applicants: Upper Peninsula Power Company.
Description: Section 205(d) Rate Filing: Common Facilities Agreement to be effective 7/16/2016.
Filed Date: 5/16/16.
Accession Number: 20160516–5254.
Comments Due: 5 p.m. ET 6/6/16.

Docket Numbers: ER16–1707–000.
Applicants: Upper Peninsula Power Company.
Description: Section 205(d) Rate Filing: PROJECT SERVICES AGREEMENT to be effective 7/16/2016.
Filed Date: 5/16/16.
Accession Number: 20160516–5256.
Comments Due: 5 p.m. ET 6/6/16.

Docket Numbers: ER16–1708–000.
Applicants: ENGIE Resources Inc.
Description: Section 205(d) Rate Filing: Notice of Succession to be effective 7/16/2016.
Filed Date: 5/16/16.
Accession Number: 20160516–5259.
Comments Due: 5 p.m. ET 6/6/16.

Docket Numbers: ER16–1709–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 3158 Basin Electric and MidAmerican Energy Attachment AO to be effective 10/1/2015.
Filed Date: 5/16/16.
Accession Number: 20160516–5277.
Comments Due: 5 p.m. ET 6/6/16.

Docket Numbers: ER16–1710–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 3159 Basin Electric and MidAmerican Energy Attachment AO to be effective 10/1/2015.
Filed Date: 5/16/16.
Accession Number: 20160516–5285.
Comments Due: 5 p.m. ET 6/6/16.

Docket Numbers: ER16–1711–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 3160 Basin Electric and MidAmerican Energy Attachment AO to be effective 10/1/2015.
Filed Date: 5/16/16.
Accession Number: 20160516–5294.
Comments Due: 5 p.m. ET 6/6/16.

Docket Numbers: ER16–1712–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 3161 Basin Electric and MidAmerican Energy Attachment AO to be effective 10/1/2015.
Filed Date: 5/16/16.
Accession Number: 20160516–5297.
Comments Due: 5 p.m. ET 6/6/16.

Docket Numbers: ER16–1713–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 3162 Basin Electric and MidAmerican Energy Attachment AO to be effective 10/1/2015.
Filed Date: 5/16/16.
Accession Number: 20160516–5301.
Comments Due: 5 p.m. ET 6/6/16.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF12–135–000.
Applicants: Iowa Hydro, LLC.
Description: Refund Report of Iowa Hydro, LLC.
Filed Date: 5/12/16.
Accession Number: 20160512–5267.
Comments Due: 5 p.m. ET 6/2/16.

Docket Numbers: QF15–793–000; QF15–794–000; QF15–795–000
Applicants: SunE B9 Holdings, LLC.
Description: Revised Refund Report of SunE B9 Holdings, LLC, et al.
Filed Date: 5/12/16.
Accession Number: 20160512–5232.
Comments Due: 5 p.m. ET 6/2/16.

Docket Numbers: QF16–825–000.
Applicants: Petra Nova Power I LLC.
Description: Form 556 of Petra Nova Power I LLC.
Filed Date: 5/16/16.
Accession Number: 20160516–5272.
Comments Due: None Applicable.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM16–4–000.
Applicants: Hoosier Energy Rural Electric Coop. Inc.
Description: Letter Amendment to May 11, 2016 Application of Hoosier Energy Rural Electric Cooperative, Inc. to Terminate QF Mandatory Purchase Obligation.
Filed Date: 5/13/16.
Accession Number: 20160513–5216.
Comments Due: 5 p.m. ET 6/10/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12211 Filed 5–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–778–002.
Applicants: MATL LLP.
Description: Compliance filing: Attachment K Compliance filing to be effective 3/27/2016.
Filed Date: 5/18/16.
Accession Number: 20160518–5104.
Comments Due: 5 p.m. ET 6/8/16.

Docket Numbers: ER16–966–001.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: NYISO compliance filing of PPTPP cleanup to be effective 2/19/2016.
Filed Date: 5/18/16.
Accession Number: 20160518–5126.
Comments Due: 5 p.m. ET 6/8/16.

Docket Numbers: ER16–1256–001.
Applicants: Panda Liberty LLC.
Description: Tariff Amendment: Supp. to Reactive Supply and Voltage Control from Generation or Other Sources to be effective 6/1/2016.
Filed Date: 5/18/16.
Accession Number: 20160518–5111.
Comments Due: 5 p.m. ET 6/8/16.

Docket Numbers: ER16–1728–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee
Description: Section 205(d) Rate Filing: Changes to Allocation of GIS Costs for Extension of API to be effective 7/1/2016.
Filed Date: 5/18/16.

Accession Number: 20160518–5078.
Comments Due: 5 p.m. ET 6/8/16.

Docket Numbers: ER16–1729–000.
Applicants: MATL LLP.
Description: Section 205(d) Rate Filing: Tariff Clean up filing to be effective 7/18/2016.
Filed Date: 5/18/16.
Accession Number: 20160518–5106.
Comments Due: 5 p.m. ET 6/8/16.

Docket Numbers: ER16–1730–000.
Applicants: Public Service Company of Colorado.
Description: Section 205(d) Rate Filing: 2016–5–18_PSCoCherokeeDeprecRatesFiling-ID2000 to be effective 7/29/2015.
Filed Date: 5/18/16.
Accession Number: 20160518–5110.
Comments Due: 5 p.m. ET 6/8/16.

Docket Numbers: ER16–1731–000.
Applicants: Public Service Company of Colorado.
Description: Section 205(d) Rate Filing: Att O–PSCo Cherokee 567 Deprec Rates to be effective 4/16/2016.
Filed Date: 5/18/16.
Accession Number: 20160518–5113.
Comments Due: 5 p.m. ET 6/8/16.

Docket Numbers: ER16–1732–000.
Applicants: Aurora Generation, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization Under Section 205 of the FPA to be effective 5/19/2016.
Filed Date: 5/18/16.
Accession Number: 20160518–5118.
Comments Due: 5 p.m. ET 6/8/16.

Docket Numbers: ER16–1733–000.
Applicants: Public Service Company of Colorado.
Description: Section 205(d) Rate Filing: 20160518_Cherokee Depreciation to be effective 7/29/2015.
Filed Date: 5/18/16.
Accession Number: 20160518–5120.
Comments Due: 5 p.m. ET 6/8/16.

Docket Numbers: ER16–1734–000.
Applicants: Public Service Company of Colorado.
Description: Section 205(d) Rate Filing: 20160518_Cherokee Depreciation Rates Filing to be effective 4/16/2016.
Filed Date: 5/18/16.
Accession Number: 20160518–5121.
Comments Due: 5 p.m. ET 6/8/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 18, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–12199 Filed 5–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR16–16–000]

Rangeland RIO Pipeline, LLC; Notice of Petition for Declaratory Order

Take notice that on May 11, 2016, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2015), Rangeland RIO Pipeline, LLC (Rangeland), filed a petition for a declaratory order approving priority and non-priority service, overall rate structure, and terms of service as more fully set out in the petition, for the 109-mile RIO Pipeline project, to provide interstate and intrastate crude oil and condensate gathering and transportation service to serve producers, marketers, and refiners transport crude oil and condensate from the Delaware Basin production area to a terminus in Midland, Texas, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to theFederal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on June 1, 2016.

Dated: May 16, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–12212 Filed 5–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR16–53–000.
Applicants: SourceGas Distribution LLC.
Description: Tariff filing per 284.123(e) + (g): Revised statement of Operating Conditions to be effective 4/25/2016; Filing Type: 1280.
Filed Date: 5/13/2016.
Accession Number: 201605135093
http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160415–5222.
Comments Due: 5 p.m. ET 6/3/16.
284.123(g) Protests Due: 5 p.m. ET 7/12/16.

Docket Numbers: RP16–928–000.
Applicants: Alliance Pipeline L.P.
Description: Section 4(d) Rate Filing: May 1–31 2016 Revised to be effective 5/1/2016.
Filed Date: 5/4/16.
Accession Number: 20160504–5227.
Comments Due: 5 p.m. ET 5/20/16.

Docket Numbers: RP16–945–000.
Applicants: Rockies Express Pipeline LLC.
Description: Section 4(d) Rate Filing: Neg Rate 2016–05–12 Sempra to be effective 5/6/2016.

Filed Date: 5/12/16.
Accession Number: 20160512–5221.
Comments Due: 5 p.m. ET 5/24/16.

Docket Numbers: RP16–946–000.
Applicants: Texas Gas Transmission, LLC.
Description: Compliance filing Compliance Filing in Docket No. CP15–14 (SIML) to be effective 6/13/2016.
Filed Date: 5/13/16.
Accession Number: 20160513–5050.
Comments Due: 5 p.m. ET 5/25/16.

Docket Numbers: RP16–947–000.
Applicants: Texas Gas Transmission, LLC.
Description: Compliance filing Compliance filing in Docket No. CP15–14–000 to submit Neg Rate Agmts to be effective 7/1/2016.
Filed Date: 5/13/16.
Accession Number: 20160513–5052.
Comments Due: 5 p.m. ET 5/25/16.

Docket Numbers: RP16–948–000.
Applicants: Texas Gas Transmission, LLC.
Description: Section 4(d) Rate Filing: Modify Backhaul Add'l Zone Letter Agmt to be effective 6/13/2016.
Filed Date: 5/13/16.
Accession Number: 20160513–5053.
Comments Due: 5 p.m. ET 5/25/16.

Docket Numbers: RP16–949–000.
Applicants: Alliance Pipeline L.P.
Description: Section 4(d) Rate Filing: May 14—31 2016 Service to be effective 5/14/2016.
Filed Date: 5/13/16.
Accession Number: 20160513–5145.
Comments Due: 5 p.m. ET 5/25/16.

Docket Numbers: RP16–950–000.
Applicants: National Fuel Gas Supply Corporation.
Description: Section 4(d) Rate Filing: Non-Conforming FT (United Refining) to be effective 4/25/2016.
Filed Date: 5/13/16.
Accession Number: 20160513–5151.
Comments Due: 5 p.m. ET 5/25/16.

Docket Numbers: RP16–951–000.
Applicants: Monroe Gas Storage Company, LLC.
Description: Section 4(d) Rate Filing: MGS Firm Wheeling to be effective 6/13/2016.
Filed Date: 5/13/16.
Accession Number: 20160513–5162.
Comments Due: 5 p.m. ET 5/25/16.

Docket Numbers: RP16–952–000.
Applicants: Mercuria Energy America, Inc., Mercuria Energy Gas Trading LLC.
Description: Joint Petition for Temporary Waiver of Commission Policies, Capacity Release Regulations and Related Tariff Provisions of Mercuria Energy America, Inc., and Mercuria Energy Gas Trading LLC under RP16–952.
Filed Date: 5/13/16.
Accession Number: 20160513–5217.
Comments Due: 5 p.m. ET 5/20/16.

Docket Numbers: RP16–953–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Annual Report of Fuel Gas Reimbursement Percentage for 2016 of Questar Southern Trails Pipeline Company.
Filed Date: 5/16/16.
Accession Number: 20160516–5402.
Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: RP16–954–000.
Applicants: White River Hub, LLC.
Description: Annual Report of Fuel Gas Reimbursement Percentage for 2016 of White River Hub, LLC.
Filed Date: 5/16/16.
Accession Number: 20160516–5403.
Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: RP16–955–000.
Applicants: DBM Pipeline, LLC.
Description: Section 4(d) Rate Filing: Substitute Tariff Record to be effective 5/11/2016.
Filed Date: 5/17/16.
Accession Number: 20160517–5078.
Due: 5 p.m. ET 5/31/16.

Docket Numbers: RP16–956–000.
Applicants: Equitrans, L.P.
Description: Section 4(d) Rate Filing: Negotiated Rate Service Agreement—Triad Hunter effective 6–1–2016 to be effective 6/1/2016.
Filed Date: 5/17/16.
Accession Number: 20160517–5098.
Comments Due: 5 p.m. ET 5/24/16.

Docket Numbers: RP16–957–000.
Applicants: Kinetica Deepwater Express, LLC.
Description: Cost and Revenue Study of Kinetica Deepwater Express, LLC.
Filed Date: 5/17/16.
Accession Number: 20160517–5115.
Comments Due: 5 p.m. ET 5/31/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 18, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–12202 Filed 5–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR16–15–000]

Oasis Midstream Services LLC; Notice of Petition for Declaratory Order

Take notice that on May 10, 2016, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2015), Oasis Midstream Services LLC (Oasis), filed a petition for a declaratory order approving the overall rates, rate structure and open season for committed service for a new interstate crude oil pipeline. The pipeline will be approximately 19-miles long, have a capacity of approximately 50,000 barrels per day and be located in McKenzie County, North Dakota, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on June 10, 2016.

Dated: May 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12210 Filed 5–23–16; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 14–252; GN Docket No. 12–268; DA 16–516]

Wireless Telecommunications Bureau Seeks Comment on Atlantic Tele-Network, Inc., and SAL Spectrum, LLC, Petition for Waiver To Claim Eligibility for a Rural Service Provider Bidding Credit in Auction 1002

AGENCY: Federal Communications Commission.

ACTION: Notice; comment sought.

SUMMARY: The Wireless Telecommunications Bureau seeks comment on petition filed by Atlantic Tele-Network, Inc., and SAL Spectrum, LLC, requesting, to the extent necessary, waiver of the Commission's rules to enable SAL to claim eligibility for a rural service provider bidding credit in its application to participate in Auction 1002.

DATES: Comments are due on or before May 26, 2016, and reply comments are due on or before June 2, 2016.

ADDRESSES: Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. When filing documents, please reference AU Docket No. 14–252 and GN Docket No. 12–268.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th St. SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For further information contact Mark Montano, *Mark.Montano@fcc.gov,* 202–418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Incentive Auction 1002 Rural Service Provider Waiver Petition Comment Public Notice* (DA 16–516) in AU Docket No. 14–252 and GN Docket No. 12–268, released on May 11, 2016. The complete text of this document is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov,* or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.*

1. On May 3, 2016, Atlantic Tele-Network, Inc. (ATN), and its wholly-owned subsidiary SAL Spectrum, LLC (SAL) (together Petitioners), filed a petition requesting, to the extent necessary, waiver of 47 CFR 1.2110(f)(4) to enable SAL to claim eligibility for a rural service provider bidding credit in its application to participate in Auction 1002, the forward auction portion of the broadcast incentive auction. The Bureau seeks comment on the petition.

2. In its application, SAL seeks a rural service provider bidding credit, which provides an eligible applicant with a 15 percent discount on its winning bid(s). To be eligible, an applicant must, *inter alia,* be a service provider that together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers. Petitioners claim that ATN subsidiaries serve "slightly more than 62,000 wireline, wireless, broadband, and cable subscribers" in the United States, that "ATN's foreign subsidiaries serve more than 250,000 wireline, wireless, broadband, and cable subscribers," and that "ATN's total worldwide subscriber base is fewer than 500,000." Petitioners seek a waiver, to the extent necessary, of any requirement that foreign subscribers be considered in determining SAL's qualifications for the bidding credit.

3. *Procedural Matters:* This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR 1.1206(b).

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2016–12278 Filed 5–23–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request (3064–0070, –0079, –0103, –0139 & –0192)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the FDIC is soliciting comment on the renewal of the information collections described below.

DATES: Comments must be submitted on or before July 25, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, MB–3016 or Manny Cabeza (202.898.3767), Counsel MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary Kuiper or Manny Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collections of information:

1. *Title:* Application for a Bank to Establish a Branch or Move its Main Office.

OMB Number: 3064–0070.

Affected Public: Insured financial institutions.

Frequency of Response: On occasion.

Annual Number of Respondents: 752.

Estimated Time per Response: 10 hours.

Total Annual Burden: 7520 hours.

General Description: Insured institutions must obtain the written consent of the FDIC before establishing or moving a main office or branch.

2. *Title:* Application for Consent to Reduce or Retire Capital.

OMB Number: 3064–0079.

Affected Public: Insured state nonmember banks.

Frequency of Response: On occasion.

Estimated Number of Respondents: 80.

Estimated Time per Response: 11 hours.

Total Annual Burden: 880 hours.

General Description: Insured state nonmember banks proposing to change their capital structure must submit an application containing information about the proposed change to obtain FDIC's consent to reduce or retire capital.

3. *Title:* Appraisals Standard.

OMB Number: 3064–0103.

Affected Public: Insured state nonmember banks.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3947.

Estimated Number of Responses per Respondent: 105.6.

Estimated Time per Response: .75 hours.

Total Annual Burden: 312,602 hours.

General Description: FIRREA directs the FDIC to prescribe appropriate performance standards for real estate appraisals connected with federally related transactions under its jurisdiction. This information collection is a direct consequence of the statutory requirement.

4. *Title:* CRA Sunshine.

OMB Number: 3064–0139.

Affected Public: Insured state nonmember banks and their affiliates and nongovernmental entities and persons.

Frequency of Response: On occasion.

Estimated Number of Respondents: 16.

Estimated Time per Response: 8.625.

Total Annual Burden: 138 hours.

General Description: This collection implements a statutory requirement imposing reporting, disclosure and recordkeeping requirements on some community reinvestment-related agreements between insured depository institutions or affiliates, and nongovernmental entities or persons.

5. *Title:* Asset Sales Forms.

OMB Number: 3064–0192.

Affected Public: Insured state nonmember banks and their affiliates and nongovernmental entities and persons.

Frequency of Response: On occasion.

Estimated Number of Respondents: 600 hours.

Estimated Time per Response: .50 hours.

Total Annual Burden: 300 hours.

General Description: The FDIC uses the Purchaser Eligibility Certification form, FDIC Form No. 7300/06, to identify prospective bidders who are not eligible to purchase assets of failed institutions from the FDIC. Specifically, section 11(p) of the Federal Deposit Insurance Act prohibits the sale of assets of failed institutions to certain individuals or entities that profited or engaged in wrongdoing at the expense of those failed institutions, or seriously mismanaged those failed institutions.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the collections of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 19th day of May 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–12181 Filed 5–23–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10346, San Luis Trust Bank, FSB, San Luis Obispo, California

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for San Luis Trust Bank, FSB, San Luis Obispo, California ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of San Luis Trust Bank on February 18, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Date: May 19, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–12180 Filed 5–23–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE & TIME: Thursday, May 26, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Proposed Statement of Policy Regarding the Public Disclosure of Closed Enforcement Files

Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2016–12248 Filed 5–20–16; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE & TIME: Thursday, May 19, 2016 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

Federal Register Notice of Previous Announcement—81 FR 30304.

The Following Item Was Also Discussed: REG 2014–01 Outline of Draft NPRM Implementing Party Segregated Accounts.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2016–12298 Filed 5–20–16; 11:15 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) and the Health Resources and Services Administration (HRSA) announce the following committee meeting.

Times and Dates: 8:30 a.m.–5:30 p.m., EDT, June 14, 2016; 8:30 a.m.–3:00 p.m., EDT, June 15, 2016.

Place: CDC Corporate Square, Building 8, Conference Room 1–ABC, 8 Corporate Boulevard, Atlanta, Georgia 30329, Telephone: (404) 639–8317. The meeting is also accessible by teleconference. Toll-free number +1 (877) 603–4228, Participant code: 42598858.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Director, CDC and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS, Viral Hepatitis and other STDs, the support of health care services to persons living with HIV/AIDS, and education of health professionals and the public about HIV/AIDS, Viral Hepatitis and other STDs.

Matters For Discussion: Agenda items include: (1) Syphilis among Men Who Have Sex with Men (MSM) and Congenital Syphilis; (2) Update on CDC's Medical Monitoring Project; (3) Discussion on Infectious Diseases prevention for people who inject drugs (PWID); (4) Findings of the Institute of Medicine Committee on A National Strategy for the Elimination of Hepatitis B and C: Feasible elimination goals and possible factors critical for success; and (5) Updates from Workgroups.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Margie Scott-Cseh, CDC, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, 1600 Clifton Road NE., Mailstop E–07, Atlanta, Georgia 30333; telephone (404) 639–8317.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2016–12224 Filed 5–23–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Time and Date

10:30 a.m.–5:00 p.m., EDT, June 14, 2016

Place: Audio Conference Call via FTS Conferencing.

Status: Open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number at 1–866–659–0537 and the pass code is 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on March 22, 2016 pursuant to Executive Order 13708, and will expire on September 30, 2017.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters for Discussion: The agenda for the Subcommittee meeting includes the following dose reconstruction program quality management and assurance activities: dose reconstruction cases under review from Sets 14–18, including the Oak Ridge sites (Y–12, K–25, Oak Ridge National Laboratory), Hanford, Feed Materials Production Center (“Fernald”), Mound Plant, Rocky Flats Plant, Nevada Test Site, Idaho National Laboratory, and Savannah River Site; preparation of the Advisory Board's next report to the Secretary, HHS, summarizing the results of completed dose reconstruction reviews.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, Email *ocas@cdc.gov*. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–12149 Filed 5–23–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting of the aforementioned committee.

Time and Date

8:00 a.m.–6:00 p.m., EDT, June 22, 2016
8:00 a.m.–5:00 p.m., EDT, June 23, 2016

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road, NE., Building 19, Kent “Oz” Nelson Auditorium, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. Time will be available for public comment. The public is welcome to submit written comments in advance of the meeting. Comments should be submitted in writing by email to the contact person listed below. The deadline for receipt June 13, 2016. All requests must contain the name, address, and organizational affiliation of the speaker, as well as the topic being addressed. Written comments should not exceed one single-spaced typed page in length and delivered in 3 minutes or less. Please note that the public comment period may end before the time indicated, following the last call for comments. Members of the public who wish to provide public comments should plan to attend the public comment session at the start time listed. Written comments received in advance of the meeting will be included in the official record of the meeting.

The meeting will be webcast live via the World Wide Web; for instructions and more information on ACIP please visit the ACIP Web site: *http://www.cdc.gov/vaccines/acip/index.html.*

Purpose: The committee is charged with advising the Director, CDC, on the appropriate use of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines. Further, under provisions of the Affordable Care Act, at section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been adopted by the Director of the Centers for Disease Control and Prevention and appear on the CDC immunization schedules must be covered by applicable health plans.

Matters for Discussion: The agenda will include discussions on: Meningococcal vaccines; human papillomavirus vaccines; influenza; cholera vaccine; hepatitis vaccines; safety of maternal Tdap vaccination; child/adolescent immunization schedule; Respiratory Syncytial Virus (RSV) and vaccine supply. A recommendation vote is scheduled for meningococcal vaccines and cholera vaccine. A Vaccines for Children (VFC) vote is scheduled for meningococcal vaccines.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Stephanie Thomas, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., MS–A27, Atlanta, Georgia 30329, telephone 404/639–8836; Email *ACIP@CDC.GOV.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–12150 Filed 5–23–16; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH or Institute)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Times and Dates: 8:00 a.m.–5:00 p.m., EDT, June 14, 2016 (Closed); 8:00 a.m.–5:00 p.m., EDT, June 15, 2016 (Closed).

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314, Telephone: 703–684–5900, Fax: 703–684–0653.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters for Dicussion: The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications.

These portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Section 10(d) Pub. L. 92–463. Agenda items are subject to change as priorities dictate.

Person for More Information: Price Connor, Ph.D., NIOSH Health Scientist, CDC, 2400 Executive Parkway, Mailstop E–20, Atlanta, Georgia 30345, Telephone: 404–498–2511, Fax: 404–498–2571.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2016–12225 Filed 5–23–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16GK]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Ingress/Egress and Work Boot Outsole Wear Investigation at Surface Mines—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety & health at work for all people through research and prevention. NIOSH, under PL 91–173 as amended by PL 95–164 (Federal Mine Safety and Health Act of 1977) has the responsibility to conduct research to improve working conditions and to prevent accidents and occupational diseases in the U.S. mining sector. The goal of the proposed project is to investigate how ingress/egress systems on mobile equipment, and personal protective footwear (boots) used by miners may lead to slips, trips and falls at stone, sand and gravel surface mining facilities. NIOSH is requesting a three-year approval for this data collection.

The project objective will be achieved through two studies. The first study aims to: Identify elements of ingress/egress systems on haulage trucks and front end loaders that pose a risk of slips, trips and falls (STFs) and could lead to STF related injuries; to determine worker behavior associated with STF incidents; and to learn how purchasing/maintenance decisions are made for ingress/egress systems. In the surface mining industry, it is still unclear which component of the ingress/egress system poses the greatest risk for STF. Hence there is a need to understand where, how and why STF incidents occur during ingress/egress on mobile equipment.

NIOSH will conduct semi-structured interviews and focus groups with mobile equipment operators, and interviews with mine management to explore the issues identified above. Focus groups will be conducted in a private setting with 4–6 participants using a predefined list of questions to help guide the discussion. Semi-structured interviews will be conducted either in person or over the telephone. Two separate interview guides will be used for mobile equipment operators and mine management to guide the discussion.

For the focus groups and semi-structured interviews, NIOSH will collect basic demographic information including years of mining experience, years of experience with haul trucks/front end loaders, and models of haul trucks/front end loaders operated most often in the past year. The semi-structured interviews and focus groups will be audio recorded for further analysis of the discussion. The semi-structured interviews will last no longer than 60 minutes and the focus groups will last no longer than 90 minutes.

The second study aims to identify changes in tread (wear) on the work boot outsoles and other outsole characteristics that will be used in further analysis to develop guidelines for work boot replacement based on measureable features of boot outsoles. This information will also be used in further analysis to determine desirable and undesirable features of work boots based on mine characteristics or job activities. Most mining companies replace footwear at a pre-determined interval or based on appearance and comfort (Chiou, Bhattacharya, & Succop, 1996) with little knowledge of the actual condition of the boot outsole and its influence on the likelihood of a STF incident. Although there have been attempts to quantify shoe outsole wear in industrial work when the shoe was ready for disposal (Chiou et al., 1996), there is a lack of knowledge in the mining industry on how quickly the outsoles of work boots wear, what sorts of wear occur, and how wear patterns influence the likelihood of a STF.

For the longitudinal study, NIOSH will provide participants with a pair of new work boots of their choice, in accordance with mine requirements and policies. Afterwards, participants will complete a preliminary survey and provide basic demographic information, details of their current work boots, and details of STF incidents in the past 3 months. Participants will be requested to wear the supplied boots at work and treat the boots as they would any pair of boots they would wear at work.

NIOSH researchers will scan the boot outsoles longitudinally, at 2- to 3-month intervals for the length of the study. To better understand wear patterns and risks, participants will complete an on-going survey that records hours worked, locations commonly visited, and tasks performed along with details of any near miss or STF event. These self-reports will be collected via survey on a bi-weekly basis. Participants will be offered multiple modalities to respond to the survey (in-person, on paper, over the telephone, via email or using an online survey) to increase response rates. When a participant feels their boots need to be replaced (or when the end of the two-year tracking period has been reached), they will complete a final survey assessing why the boots were at the end of their life and will return their boots to NIOSH researchers for further analysis.

For the cross-sectional study, participants' current work boots will be scanned and participants will complete the preliminary survey that includes basic demographic information, details of current work boots, and details of STF events in the past three months.

The results of these research studies will have very different applications, but one goal: Reducing the risks of STF accidents at surface mining facilities. The results of the ingress/egress study will help identify features of the ingress/egress system that may lead to STF accidents so that they can be made safer by the manufacturers and to allow mining companies to make better purchasing decisions and encourage the acquisition of systems with better slip and fall protection. The results of the boot outsole wear study will be used to inform mine policy and practices by providing miners and mine managers with the knowledge to determine when to replace footwear based on measurable features of the boot outsoles.

The total estimated burden hours are 643. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Mobile equipment Operators	Mobile equipment operators focus group guide.	25	1	1.25
Mobile equipment operators	Mobile equipment operator interview guide	10	1	45/60
Mine Management	Mine Management Interview Guide	15	1	45/60
Mine Worker	Screening Questionnaire	50	1	6/60
Mine Worker	Informed consent form (Longitudinal boot outsole study).	50	1	12/60
Mine Worker	Preliminary survey	150	1	15/60
Mine Worker	Recurring survey	50	52	12/60
Mine Worker	Final Survey	50	1	6/60
Mine Worker	Talent and consent waiver	150	1	6/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–12148 Filed 5–23–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–0106]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Preventive Health and Health Services Block Grant (OMB Control No. 0920–0106, exp. 8/31/2016)—Revision—Office for State, Tribal, Local and Territorial Support (OSTLTS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The management of the Preventive Health and Health Services (PHHS) Block Grant program has transitioned from the National Center for Chronic Disease Prevention and Health Promotion to the Office for State, Tribal, Local and Territorial Support (OSTLTS). The Program continues to provide awardees with a source of flexible funding for health promotion and disease prevention programs. Currently, 61 awardees (50 states, the District of Columbia, two American Indian Tribes, and eight U.S. territories) receive Block Grants to address locally-defined public health needs in innovative ways. Block Grants allow awardees to prioritize the use of funds and to fill funding gaps in programs that deal with the leading causes of death and disability. Block Grant funding also provides awardees with the ability to respond rapidly to emerging health issues, including outbreaks of diseases or pathogens. The PHHS Block Grant program is authorized by sections 1901–1907 of the Public Health Service Act.

CDC currently collects information from Block Grant awardees to monitor their objectives and activities (Preventive Health and Health Services Block Grant, OMB Control No. 0920–0106, expiration 8/31/2016). Each awardee is required to submit an annual application for funding (Work Plan) that describes its objectives and the populations to be addressed, and an Annual Report that describes activities, progress toward objectives, and Success Stories which highlight the improvements Block Grant programs have made and the value of program activities. Information is submitted electronically through the web-based Block Grant Information Management System (BGMIS).

CDC PHHS Block Grant program has benefited from this system by efficiently collecting mandated information in a format that allows data to be easily retrieved in standardized reports. The electronic format verifies completeness of data at data entry prior to submission to CDC, reducing the number of re-submissions that are required to provide concise and complete information.

The Work Plan and Annual Report are designed to help Block Grant awardees attain their goals and to meet reporting requirements specified in the program's authorizing legislation. Each Work Plan objective is defined in SMART format (Specific, Measurable, Achievable, Realistic and Time-based), and includes a specified start date and end date. Block Grant activities adhere to the Healthy People (HP) framework established by the Department of Health and Human Services (HHS). The current version of the BGMIS associates each awardee-defined activity with a specific HP National Objective, and identifies the location where funds are applied. Although there are no substantive changes to the information collected, the Work Plan guidance document for users has been updated to improve their usability and the clarity of instructions provided to BGMIS users.

There are no changes to the number of Block Grant awardees (respondents), or the estimated burden per response for the Work Plan or the Annual Report. At this time, the BGMIS does not collect data related to performance measures, but a future information collection request may outline additional reporting requirements related to performance measures.

The PHHS Block Grant program must continue to collect data in order to remain in compliance with legislative mandates. The system allows CDC and Grantees to measure performance, identifying the extent to which objectives were met and identifying the most highly successful program interventions.

CDC requests OMB approval to continue the Block Grant information collection for three years. CDC will continue to use the BGMIS to monitor awardee progress, identify activities and personnel supported with Block Grant funding, conduct compliance reviews of Block Grant awardees, and promote the use of evidence-based guidelines and interventions. There are no changes to the number of respondents or the estimated annual burden per respondent. The Work Plan and the Annual Report will be submitted annually. The estimated burden per response for the Work Plan is 20 hours and the estimated burden per response for the Annual Report is 15 hours.

Participation in this information collection is required for Block Grant awardees. There are no costs to respondents other than their time. Awardees continue to submit Success Stories with their Annual Progress reports through BGMIS, without changes.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Block Grant Awardees	Work Plan	61	1	20
	Annual Report	61	1	15

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–12219 Filed 5–23–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–15BCU]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Ambulatory Medical Care Survey Supplement on Culturally and Linguistically Appropriate Services (NAMCS CLAS)—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As the population of the United States becomes increasingly diverse, it is important that health care providers deliver culturally and linguistically competent services. Culturally and linguistically appropriate services (CLAS) are respectful of and responsive to individual cultural health beliefs and practices, preferred languages, health literacy levels, and communication needs. The National CLAS Standards in Health and Health Care were established in 2000 by the Office of Minority Health (OMH), Department of Health and Human Services (DHHS) to advance health equity, improve quality, and eliminate health care disparities. In 2013, OMH published the Enhanced Standards for CLAS in Health and Health Care to revise the National CLAS Standards in order to reflect advancements made since 2000, expand their scope and improve their clarity to ensure better understanding and implementation. Although there has been increased awareness and efforts to train culturally and linguistically competent health care providers, there has not been a systematic evaluation of the level of adoption or implementation of the National CLAS Standards among physicians. Due to the limited understanding of how the Standards are adopted and implemented, it is difficult to know what goals have been achieved and which need more work.

OMH came to NCHS' Division of Health Care Statistics with this project because of our expertise collecting data from physicians in the National Ambulatory Medical Care Survey (NAMCS). The NAMCS CLAS project meets two of the Division's missions: conduct multidisciplinary research directed towards development of new scientific knowledge on the provision, use, quality, and appropriateness of ambulatory care; and develop and sustain collaborative partnerships internally within DHHS and externally with public, private, domestic and international entities on health care statistics programs. The purpose of the NAMCS CLAS survey is to describe the awareness, training, adoption, and implementation of the Enhanced Standards for CLAS in Health and Health Care among office-based physicians. The information will be collected directly from physician respondents through an online survey, paper form or telephone administration. Telephone interviews will be the follow-up alternative for non-respondents. Information that will be collected includes demographic information, specialty, number of years the physician has provided direct patient care, training related to cultural competency and the National CLAS Standards, provision of CLAS to patients, organizational characteristics that aided or hindered provision of CLAS, and awareness of the National CLAS Standards.

The target universe of the NAMCS CLAS includes non-federally employed physicians who were classified by the American Medical Association (AMA) or the American Osteopathic Association (AOA) as providing "office-based, patient care." The target universe excludes physicians in the specialties of anesthesiology, radiology, and pathology. The survey sample of 2,400 physicians will be used as the basis to provide regional and national estimates. Participation in the NAMCS CLAS is voluntary. There will be no financial incentive to participate. A one-year approval will be requested.

There is no cost to the respondents other than their time. The total estimated annual burden hours are 676.

Estimated Annualized Burden Hours

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Office-based physicians	NAMCS CLAS questionnaire	2,400	1	15/60
Office-based physicians (non-respondents)	NAMCS CLAS Phone Script	912	1	5/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–12147 Filed 5–23–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control Meeting

In accordance with Section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces, the following meeting of the aforementioned committee:

Time and Date: 1:00 p.m.–4:00 p.m., June 14, 2016 (CLOSED).

Place: Teleconference.

Status: The meeting as designated above will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC pursuant to Public Law 92–463.

Purpose: The Board of Scientific Counselors makes recommendations regarding policies, strategies, objectives, and priorities; and reviews progress toward injury prevention goals and provides evidence in injury prevention-related research and programs. The Board also provides advice on the appropriate balance of intramural and extramural research, the structure, progress, and performance of intramural programs. The Board is designed to provide guidance on extramural scientific program matters, including the: (1) Review of extramural research concepts for funding opportunity announcements; (2) conduct of Secondary Peer Review of extramural research grants, cooperative agreements, and contracts applications received in response to the funding opportunity announcements as it relates to the Center's programmatic balance and mission; (3) submission of secondary review recommendations to the Center Director of applications to be considered for funding support; (4) review of research portfolios, and (5) review of program proposals. The board shall provide guidance on the National Center of Injury Prevention and Control's programs and research activities by conducting scientific peer review of intramural research and programs within the National Center for Injury Prevention and Control; by ensuring adherence to Office of Management and Budget requirements for intramural peer review; and by monitoring the overall direction, focus, and success of the National Center for Injury Prevention and Control.

Matters to Be Discussed: The BSC, NCIPC will meet to conduct a Secondary Peer Review of extramural research grant applications received in response to four (4) Funding Opportunity Announcements (FOAs): Research Grants for Preventing Violence and Violence Related Injury (R01), FOA RFA CE–16–001; Research to Advance Primary Care-Pharmacy Linkage for Medication Review to Reduce Older Adult Falls, FOA RFA CE–16–002; The CDC National Centers of Excellence in Youth Violence Prevention: Building the Evidence for Community- and Policy-Level Prevention, FOA RFA CE–15–002; and Research on Prescription Opioid Use, Opioid Prescribing, and Associated Heroin Risk, FOA RFA CE–16–003. Applications will be assessed for applicability to the Center's mission and programmatic balance. Recommendations from the secondary review will be voted upon and the applications will be forwarded to the Center Director for consideration for funding support.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gwendolyn H. Cattledge, Ph.D., M.S.E.H., Deputy Associate Director for Science, NCIPC, CDC, 4770 Buford Highway NE., Mailstop F–63, Atlanta, GA 30341, Telephone (770) 488–1430.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–12223 Filed 5–23–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates to Serve on the Advisory Committee on Immunization Practices (ACIP)

The Centers for Disease Control and Prevention CDC is soliciting nominations for membership on the ACIP. The ACIP consists of 15 experts in fields associated with immunization, who are selected by the Secretary of the U. S. Department of Health and Human Services to provide advice and guidance to the Secretary, the Assistant Secretary for Health, and the CDC on the control of vaccine-preventable diseases. The role of the ACIP is to provide advice that will lead to a reduction in the incidence of vaccine preventable diseases in the United States, and an increase in the safe use of vaccines and related biological products. The committee also establishes, reviews, and as appropriate, revises the list of vaccines for administration to children eligible to receive vaccines through the Vaccines for Children (VFC) Program.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the field of immunization practices; multi-disciplinary expertise in public health; expertise in the use of vaccines and immunologic agents in both clinical and preventive medicine; knowledge of vaccine development, evaluation, and vaccine delivery; or knowledge about consumer perspectives and/or social and community aspects of immunization programs. Federal employees will not be considered for membership. Members may be invited to serve for four-year terms.

The next cycle of selection of candidates will begin in the summer of 2016, for selection of potential nominees to replace members whose terms will end on June 30, 2017.

Selection of members is based on candidates' qualifications to contribute to the accomplishment of ACIP objectives (*http://www.cdc.gov/vaccines/acip/index.html*). The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of professional training and background, points of view represented, and the committee's function. Consideration is given to a broad representation of geographic areas within the U.S., with equitable representation of the sexes, ethnic and racial minorities, and persons with disabilities. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current *curriculum vitae,* including complete contact information (telephone numbers, mailing address, email address)
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services*

The deadline for receipt of all application materials (for consideration for term beginning July 1, 2017) is June 30, 2016. All files must be submitted electronically as email attachments to: Ms. Stephanie Thomas, c/o ACIP Secretariat, Email: *SThomas5@cdc.gov.*

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

* Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person *not* employed by HHS (*e.g.,* CDC, NIH, FDA, etc.).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–12222 Filed 5–23–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than June 23, 2016.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Corps Community Month Event Form OMB No. 0915–0362—Extension

Abstract: Corps Community Month, formerly Corps Community Day, was created in 2011 and celebrates the National Health Service Corps (NHSC) every October. The NHSC is a program administered by the Bureau of Health Workforce (BHW) within HRSA. The goals of Corps Community Month encompass the following: Increase awareness of the NHSC to potential applicants and the greater primary health community; create a sense of community and connectedness among NHSC program participants, alumni, partners and staff; and underscore the NHSC's role in bringing primary health care services to the nation's neediest communities. Current program participants, alumni, NHSC Ambassadors, sites, primary care organizations, and professional associations plan events and report the details of their events to BHW so that they can be added to the state-by-state map of events. To avoid duplication of effort, eliminate confusion regarding allowable event dates, avoid data entry errors, and implement a brief post-event satisfaction survey, BHW would like to continue to use the standard form that event planners use to report to BHW. The fillable form is available online and has 26 fields for event planners to populate to submit for inclusion on the map. There are also approximately five fields to populate following the event to measure satisfaction. Both the pre-event and post-event data fields are held in one form.

Need and Proposed Use of the Information: The information collected is used and needed to highlight the impact of BHW and the NHSC programs in underserved and rural areas as part of outreach initiatives. Event information is captured and tracked to ensure that each HHS region is highlighted.

Likely Respondents: Current program participants, alumni, NHSC Ambassadors, sites, primary care organizations, and professional associations

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Corps Community Month Event Planning Form	300	1	300	.066	19.8
Corps Community Month Event Satisfaction	300	1	300	.033	9.9
Total	*300		*300		29.7

*The same individuals complete both of the forms for a total of 300 respondents and responses.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–12146 Filed 5–23–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Gabriella Miller Kids First Sequencing Center.

Date: June 14, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NHGRI, 5635FL, Twinbrook 4th Floor Conf. Rm., Twinbrook, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; ENCODE MAPPING.

Date: June 21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Dulles Airport Marriott, 45020, Dulles View, Aviation Drive, Dulles, VA 20166.

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: May 17, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12139 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Development of Adeno-Associated Virus Vectors for the Treatment of Glycogen Storage Disease Type Ia

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services (HHS), is contemplating the grant of an exclusive license to practice the inventions embodied in the following Patent Applications to Dimension Therapeutics, Inc. (“Dimension”) located in Cambridge, Massachusetts, USA:

Intellectual Property

United States Provisional Patent Application No. 61/908,861, filed November 26, 2013, titled “Adeno-Associated Virus Vectors for the Treatment of Glycogen Storage Disease” [HHS Reference No. E–552–2013/0–US–01]; International Patent Application No. PCT/US2014/067415 filed November 25, 2014 titled “Adeno-Associated Virus Vectors for the Treatment of Glycogen Storage Disease” [HHS Reference No. E–552–2013/0–PCT–02] and continuation applications, divisional applications and foreign counterpart applications claiming priority to the US provisional application No. 61/908,861.

With respect to persons who have an obligation to assign their right, title and interest to the Government of the United States of America, the patent rights in these inventions have been assigned to the Government of the United States of America.

The prospective exclusive licensed territory may be worldwide and the field of use may be limited to: “Development and commercialization of gene therapy using adeno-associated viral vectors for the treatment of Glycogen Storage Disease Type Ia.”

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before June 8, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Surekha Vathyam, Ph.D., Senior Licensing and Patenting Manager, National Cancer Institute Technology Transfer Center, 9609 Medical Center Drive, Rm. 1E–530, MSC9702, Rockville, MD 20850–9702, Email: *vathyams@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The subject technologies disclose novel adeno-associated virus (AAV) vectors expressing human glucose-6-phosphatase-alpha (G6Pase-alpha or G6PC) for the treatment of glycogen storage disease, particularly glycogen storage disease type Ia (GSD-Ia). GSD-Ia is an inherited disorder of metabolism associated with life-threatening hypoglycemia, hepatic malignancy, and renal failure caused by the deficiency of G6Pase-alpha, a key enzyme in maintaining blood glucose homeostasis between meals. The two novel gene therapy vectors of the invention, rAAV-GPE-G6PC and rAAV-GPE-co-G6PC are recombinant AAV vectors expressing wild-type G6Pase-alpha and codon-optimized (co) G6Pase-alpha, respectively. G6Pase-alpha in both vectors is directed by nucleotides -2864 to -1 of the G6PC gene 5'-flanking promoter/enhancer region (GPE). The vectors also contain an intron and stuffer sequences. The rAAV-GPE-G6PC vector not only corrects metabolic abnormalities in murine GSD-Ia (G6pc-/- mice) but also prevents long-term risk of hepatocellular adenoma. The results also showed that the enhancer elements upstream the human G6PC minimal promoter at nucleotides -382 to -1 contained within the rAAV-GPE-G6PC vector are responsible for the increased efficacy in treating GSD-Ia mice.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Complete applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Exclusive Patent License Agreement. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: May 17, 2016.

Richard U. Rodriguez,

Associate Director, NCI, National Institutes of Health.

[FR Doc. 2016–12169 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: June 13–14, 2016.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel O'Hare—Rosemont, 5500 North River Road, Rosemont, IL 60018.

Contact Person: Olga A. Tjurmina, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nursing and Related Clinical Sciences Overflow.

Date: June 14–15, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Martha L. Hare, Ph.D., RN, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 451–8504, *harem@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Auditory Neuroscience.

Date: June 14–15, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.

Date: June 16–17, 2016.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue NW., Washington, DC 20036.

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Genetics Study Section.

Date: June 22–23, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Contact Person: Michael L. Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Acute Neural Injury and Epilepsy Study Section.

Date: June 22–23, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR14–022: Juvenile Protective Factors and Aging.

Date: June 22, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wallace Ip, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301–435–1191, *ipws@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: May 17, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12137 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Development of Adeno-Associated Virus Vectors for the Treatment of Glycogen Storage Disease Type Ia

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services (HHS), is contemplating the grant of an exclusive license to practice the inventions embodied in the following Patent Applications to Dimension Therapeutics, Inc. ("Dimension") located in Cambridge, Massachusetts, USA:

Intellectual Property

United States Provisional Patent Application No. 62/096,400, filed December 23, 2014, titled "Adeno-Associated Virus Vectors Encoding G6PC and Uses Thereof" [HHS Reference No. E–039–2015/0–US–01]; International Patent Application No. PCT/US2015/067338 filed December 22, 2015 titled "Adeno-Associated Virus Vectors Encoding G6PC and Uses Thereof" [HHS Reference No. E–039–2015/0–PCT–02]; and all continuation applications, divisional applications and foreign counterpart applications claiming priority to the U.S. provisional application No. 62/096,400.

The patent rights in these inventions have been assigned and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive licensed territory may be worldwide and the field of use may be limited to: "Development and commercialization of gene therapy using adeno-associated viral vectors for the treatment of Glycogen Storage Disease Type Ia."

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before June 8, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Surekha Vathyam, Ph.D., Senior Licensing and Patenting Manager, National Cancer Institute Technology Transfer Center, 9609 Medical Center Drive, Rm 1E–530 MSC9702, Rockville, MD 20850–9702, Email: *vathyams@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The subject technology discloses novel adeno-associated virus (AAV) vectors expressing human G6Pase-alpha (or G6PC) for the treatment of glycogen storage disease, particularly GSD-Ia. GSD-Ia is an inherited disorder of metabolism associated with life-threatening hypoglycemia, hepatic malignancy, and renal failure caused by the deficiency of G6Pase-alpha, a key enzyme in maintaining blood glucose homeostasis between meals. These new recombinant AAV vectors that express human G6Pase-alpha directed by the tissue-specific human G6PC promoter/enhancer at nucleotides -2864 to -1 incorporate the following improvements: (1) One expresses a variant of G6Pase-alpha with enhanced enzymatic activity; (2) the other expresses a codon-optimized variant of G6Pase-alpha with higher enzyme expression levels and enhanced enzymatic activity.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Complete applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Exclusive Patent License Agreement. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act*, 5 U.S.C. 552.

Date: May 19, 2016.

Richard U. Rodriguez,

Associate Director, NCI, National Institutes of Health.

[FR Doc. 2016–12168 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Stem Cell-Derived Blood Products (SBIR).

Date: June 16, 2016.

Time: 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: May 18, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12140 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Heart, Lung, and Blood Program Project Review Committee.

Date: June 17, 2016.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey H. Hurst, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301–435–0303, *hurstj@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: May 18, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12133 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; "Review of Support of Competitive Research (SCORE) applications".

Date: June 24, 2016.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3An.12N, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Shinako Takada, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.22, Bethesda, MD 20892–6200, 301–402–9448, *shinako.takada@nih.gov*.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Regional Consortia for High Resolution Cryoelectron Microscopy.

Date: June 29, 2016.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3An.12N, 45 Center Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Margaret J. Weidman, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301–594–3663.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 19, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12175 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications/contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications/contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Feasibility Studies to Build Collaborative Partnerships in Cancer Research (P20).

Date: June 15–16, 2016.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Clifford W. Schweinfest, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W108, Bethesda, MD 20892–9750, 240–276–6343, *schweinfestcw@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Therapeutic Agents.

Date: June 15, 2016.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W238, Bethesda, MD 20892–9750, 240–276–6371, *decluej@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) SEP V.

Date: June 22, 2016.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Caron A. Lyman, Ph.D., Chief, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W126, Bethesda, MD 20892–9750, 240–276–6348, *lymanc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 19, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12171 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Iwin: Navigating Your Path to Well-Being

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Drug Abuse (NIDA), the National Institutes of Health, has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 1, 2016, page 10640 and allowed

60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute on Drug Abuse (NIDA), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact*: Dr. Belinda Sims, Health Scientist, DESPR, PRB, National Institute on Drug Abuse, 6001 Executive Boulevard Room 5153, MSC 9589 Bethesda, Maryland 20892–9589,-toll-free number (301) 402–1533 or Email your request, including your address to: *bsims@nida.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Iwin: Navigating your Path to Well-Being, 0925–NEW, National Institute on Drug Abuse (NIDA,) National Institutes of Health (NIH).

Need and Use of Information Collection:

The overarching objective of this proposal is to conduct a randomized trial to evaluate the effectiveness of the Individual Well-Being Navigator (Iwin) mobile application, a substance abuse prevention and well-being enhancement program designed specifically for military personnel. Iwin provides an innovative, tailored mobile application using best practices in behavior change science and innovative technology to assist military personnel in preventing substance abuse and enhancing well-being by providing them with the most appropriate intervention content at the right time. It integrates Transtheoretical Model of Behavior Change based tailoring, SMS messaging, stage of change matched activities, and engaging game-like features in a cutting edge multiple behavior change program. The first year of this project will focus on the completion of development and beta testing of the app. In year 2, the efficacy of the Iwin program will be determined by tests of statistical significance indicating that participants in the Treatment condition had lower scores on an index of substance use and other behavioral risks than the control group at 6 and 9 month follow-up. The overall design is a 2 group (treatment and control group) by 3 Occasions with repeated measures across occasions. Once shown to be effective, the Iwin program will assist organizations that serve military personnel to meet the directives of both the DoD and CJCS indicating that prevention programs be evidence based, evaluated by the specified populations and address full Total Force Fitness paradigm rather than a single behavior.

OMB approval is requested for 1 year. There are no capital, operating, and/or maintenance costs. The total estimated annualized burden hours are 1,760.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Screening (Attachment 3)	Military Personnel	1,624	1	10/60	271
Baseline (Attachment 4)			1	45/60	600
Follow-up Outcome Assessments (6 and 9 month) (Attachment 5).		812	2	30/60	812
Consent Form (Attachment 1)			1	5/60	68
Total		2,436	4872		1,760

Dated: May 28, 2016.

Genevieve R. deAlmeida

Project Clearance Liaison, NIDA, NIH.

[FR Doc. 2016–12164 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; NIEHS R13 Conference Grants Applications.

Date: June 7, 2016.

Time: 12:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Keystone Building, K–2164/2166, 530 Davis Drive, Morriville, NC 27713 (Telephone Conference Call).

Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Breast Cancer and the Environment Communication Research Initiative.

Date: June 10, 2016.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Keystone, 530 Davis Drive, Research Triangle Park, NC 27709.

Contact Person: Alfonso R. Latoni, Ph.D., Chief and Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 919–541–7571, *alfonso.latoni@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: May 18, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12138 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Alzheimer's Disease Core.

Date: July 19, 2016.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeannette L. Johnson, Ph.D., National Institutes on Aging, National Institutes Of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 19, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12174 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Career Development Program to Promote Diversity in Health Research.

Date: June 17, 2016.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Stephanie L. Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784, *constantsl@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: May 18, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12134 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Hormone Therapy and Cognitive Aging.

Date: June 21, 2016.

Time: 4:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 19, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12173 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; NIBIB K and R13 Review (2016/10).

Date: June 27, 2016.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mark Martin, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Suite 920, Bethesda, MD 20892, (240) 447–2148, *mark.martin@mail.nih.gov*.

Dated: May 17, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12135 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Institutional Training Mechanism Review Committee.

Date: June 16–17, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0288, *cjoyce@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 18, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12141 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SEP–4.

Date: June 10, 2016.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Tushar Baran Deb, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W624 Bethesda, MD 20892–9750 240–276–6132 *tushar.deb@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: *May 19, 2016.*

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12172 Filed 5–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0369]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee will meet in Detroit, Michigan to discuss committee matters relating to Great Lakes pilotage, including the review of proposed regulations and policies. This meeting is open to the public.

DATES: The Great Lakes Pilotage Advisory Committee will meet on Tuesday, June 14, 2016 from 9:00 a.m. to 5:00 p.m. Please note that this meeting may close early if the committee completes its business.

ADDRESSES: The meeting will be held at the Detroit Metro Airport Marriott, Dearborn Room, 30559 Flynn Drive, Romulus, MI, 48174. The telephone number for the hotel is 734–729–7555 and the Web site is: *http://www.marriott.com/hotels/travel/dtwrm-detroit-metro-airport-marriott/*. For additional information on the location or to request reasonable accommodations for the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT** below as soon as possible.

Instructions: To facilitate public participation, written comments on the issues in the "Agenda" section below must be submitted no later than June 3, 2016 if you want committee members to review your comment prior to the meeting. You must include "Department of Homeland Security" and the docket number (USCG–2016–0369). Written comments may also be submitted using Federal eRulemaking Portal: *http://www.regulations.gov*. For technical difficulties, contact Ms. Michelle Birchfield. Comments received will be posted without alteration at *http://www.regulations.gov* including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket

Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Docket Search: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* and use "USCG–2016–0369" in the "Search" box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Commandant (CG–WWM–2), ATTN: Ms. Michelle Birchfield, Great Lakes Pilotage Advisory Committee Alternate Designated Federal Officer, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1537, fax 202–372–8387, or email at *Michelle.R.Birchfield@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the Federal Advisory Committee Act, (Title 5, U.S.C. Appendix). The Great Lakes Pilotage Advisory Committee, established under the authority of 46 U.S.C. 9307, makes recommendations to the Secretary of Homeland Security and the Coast Guard on matters relating to Great Lakes pilotage, including the review of proposed Great Lakes pilotage regulations and policies.

Further information about the Great Lakes Pilotage Advisory Committee is available here: *https://www.facadatabase.gov.* Click on the search tab and type "Great Lakes" into the search form. Then select "Great Lakes Pilotage Advisory Committee" from the list. A copy of all meeting materials will be made available at *https://www.uscg.mil/hq/cg5/cg552/pilotage.asp* by June 8, 2016.

Agenda: The Great Lakes Pilotage Advisory Committee will meet on Tuesday, June 14, 2016 to review, discuss, deliberate and formulate recommendations, as appropriate, on the following topics:

(1) Rulemaking
  (a) Regulatory process presentation
  (b) Status of 2016 and 2017 rulemaking
  (c) Weighting factors
  (d) Pilot compensation
  (i) Reliable Data
  (ii) Differences between projected and actual revenues
  (e) Uniform accounting system
  (f) Multi-year rates and a COLA
  (g) Mediated rulemaking
(2) Staffing model
(3) Applicant pilot requirements
  (a) Articulated tug/tow as equivalent experience
  (b) Applicant compensation
  (c) Applicant training
(4) Reports on association infrastructure improvements
(5) Great Lakes Pilotage Office location discussion
(6) Establishing new subcommittees
  (a) Pool Certification
  (b) Change point review

Public comments or questions will be taken throughout the meeting as the committee discusses the issues and prior to deliberations and voting. There will also be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

D.C. Barata,

Captain, U.S. Coast Guard, Acting Director, Marine Transportation Systems.

[FR Doc. 2016–12153 Filed 5–23–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4269–DR; Docket ID FEMA–2016–0001]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4269–DR), dated April 25, 2016, and related determinations.

DATES: *Effective Date:* May 2, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 25, 2016.

Austin, Colorado, Waller, and Wharton Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–12119 Filed 5–23–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4269–DR; Docket ID FEMA–2016–0001]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4269–DR), dated April 25, 2016, and related determinations.

DATES: Effective May 9, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 25, 2016.

Fort Bend, Liberty, Montgomery, and San Jacinto Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–12121 Filed 5–23–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2015–0029; OMB No. 1660–0141]

Agency Information Collection Activities: Proposed Collection; Comment Request; Controlled Equipment Request Form.

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of information from grant recipients requesting to purchase controlled equipment.

DATES: Comments must be submitted on or before July 25, 2016.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2015–0029. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Abigail Bordeaux, Management & Program Analyst, FEMA, Grant Programs Directorate, at (202) 786–0872. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This form was developed to collect required information as part of the implementation of *Executive Order 13688: Federal Support for Local Law Enforcement Equipment Acquisition,* issued January 16, 2015, which established a Prohibited Equipment List and a Controlled Equipment List and identified actions that can improve Federal support for the appropriate use, acquisition, and transfer of controlled equipment by state, local, tribal, territorial, and private grant recipients. One of the requirements of the report is to collect information on the grant recipient, their policies, training, record keeping, and detailed justification on why that type of requested information is needed. In considering the approach to implementing these recommendations, FEMA's Grant Programs Directorate worked hard to balance the requirement to collect the information, and the effort required by the grant recipients. The proposed form includes only fields required to comply with the recommendations (which were accepted by the President). The fillable nature of the form reduces the amount of time and effort required for grant recipients.

In accordance with *Executive Order 13688: Federal Support for Local Law Enforcement Equipment Acquisition,* and the *Recommendations Pursuant to Executive Order 13688,* all Federal equipment acquisition programs must require grant recipients that apply for controlled equipment to provide mandatory information in their application, including a detailed justification with a clear and persuasive explanation of the need for the controlled equipment, the availability of the requested controlled equipment to recipient in its inventory or through other means, certifications that appropriate protocols and training requirements have been adopted, evidence of the civilian governing body's review and approval or concurrence of the entity's acquisition of the requested controlled equipment, and whether the entity has been or is in violation of civil rights and other statutes, regulations, or programmatic terms. Ongoing coordination among the various Federal agencies will ensure that a uniform process is in place to assess the adequacy of the justification in each application. This coordination includes sharing of required information to prohibit duplication of grant funding for controlled equipment or potentially granting of funding for controlled equipment to an entity that has been sanctioned by another agency.

Collection of Information

Title: Controlled Equipment Request Form.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0141.

FEMA Forms: FEMA Form 087–0–0–1, Controlled Equipment Request Form.

Abstract: This form was developed to collect required information as part of the implementation of Executive Order 13688: Federal Support for Local Law Enforcement Equipment Acquisition, issued January 16, 2015, which established a Prohibited Equipment List and a Controlled Equipment List and identified actions that can improve Federal support for the appropriate use, acquisition, and transfer of controlled equipment by state, local, tribal, territorial, and private grant recipients.

Affected Public: Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 175.

Number of Responses: 175.

Estimated Total Annual Burden Hours: 131 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $3,877.60. There are no annual costs to respondents' operations and maintenance costs for technical services. There are no annual start-up or capital costs. The cost to the Federal Government is $759.40.

Comments

Comments may be submitted as indicated in the ADDRESSES caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Dated: May 18, 2016.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2016–12179 Filed 5–23–16; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4270–DR; Docket ID FEMA–2016–0001]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–4270–DR), dated May 6, 2016, and related determinations.

DATES: *Effective Date:* May 6, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

> I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of March 8–13, 2016, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Arkansas.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.
>
> Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Charles Maskell, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Arkansas have been designated as adversely affected by this major disaster:

Arkansas, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Desha, Lincoln, Ouachita, Phillips, and Prairie Counties for Public Assistance.

All areas within the State of Arkansas are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–12122 Filed 5–23–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0069]

Agency Information Collection Activities: Application by Refugee for Waiver of Grounds of Excludability, Form I–602; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on March 18, 2016, at 81 FR 14877, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 23, 2016. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0069.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Acting Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0042 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application by Refugee for Waiver of Grounds of Excludability.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–602; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–602 is necessary to establish eligibility for waiver of excludability based on humanitarian, family unity, or public interest.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–602 is 2,500 and the estimated hour burden per response is 0.25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 625 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: May 18, 2016.

Samantha Deshommes,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–12098 Filed 5–23–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–37]

30-Day Notice of Proposed Information Collection: Public Housing Reform Act: Changes to Admission and Occupancy Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* June 23, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 29, 2016 at 81 FR 17487.

A. Overview of Information Collection

Title of Information Collection: Public Housing Reform Act: Changes to Admission and Occupancy Requirements.

OMB Approval Number: 2577–0230.

Type of Request: Revision of currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: The purpose of this information collection submission is to implement the requirement that public housing agencies have available upon request, their respective admission and occupancy policies for both the public and the Department of Housing and Urban Development. Public Housing Authorities must have on hand and available for inspection policies related to admission and continued occupancy, so as to respond to inquiries from tenants, legal-aid services, HUD, and other interested parties informally or through the Freedom of Information Act. Written documentation of policies relating to Public Housing and Section 8 Assistance Programs implemented under the Quality Housing and Work Responsibility Act of 1998, such as eligibility for admission and continued occupancy, local preferences, and rent determination, must be maintained and made available by Public Housing Authorities.

The collection of information implements changes to the admission and occupancy Requirements for the Public Housing and Section 8 Assisted Housing Programs made by the Quality Housing and Work Responsibility (QHWRA) Act 1998, (Title V of the FY 1999 HUD appropriations Act, Public Law 105–276, 112 Stat. 2518, approved October 21, 1998), which amended the United States Housing Act of 1937. QHWRA made comprehensive changes to HUD's Public Housing Section 8 Programs. Some of the changes made by the 1998 Act (*i.e.,* QHWRA) affect public housing only and others affect the Section 8 and Public Housing Programs.

These changes cover choice of rent, community service and self-sufficiency in public housing; and admission preferences and determination of income and rent in public housing and Section 8 Housing Assistance Programs.

Revisions are made to this collection to reflect adjustments in calculations based on the total number of current, active public housing agencies (PHAs) to date. The number of active public housing agencies has changed from 4,058 to 3,946 since the last approved information collection. The number of PHAs can fluctuate due to a number of factors, including but not limited to the merging of two or more PHAs or the termination of the public housing and/or voucher programs.

Respondents (*i.e.* affected public): State, Local or Tribal Government.

Estimated Number of Respondents: 3,946.

Estimated Number of Responses: 3,946.

Frequency of Response: 1.

Average Hours per Response: 24.

Total Estimated Burdens: 94,704.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 18, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–12244 Filed 5–23–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2016–N058; 40120–1112–0000–F2]

Incidental Take Permit Applications for Alabama Beach Mouse; Gulf Shores, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: Under the Endangered Species Act, we, the U.S. Fish and Wildlife Service, announce the receipt and availability of two proposed low-effect habitat conservation plans and accompanying incidental take permit applications for take of the Alabama beach mouse habitat incidental to construction in Gulf Shores, Alabama. We invite public comments on these documents.

DATES: We must receive any written comments at our Alabama Field Office (see **ADDRESSES**) on or before June 23, 2016.

ADDRESSES: *Obtaining Documents:* Documents are available for public inspection by appointment during normal business hours at the Fish and Wildlife Service's Alabama Field Office, 1208–B Main Street, Daphne, Alabama 36526. Please submit comments by U.S. mail to the Fish and Wildlife Service's Alabama Field Office.

Submitting Comments: For how to submit comments, see Public Comments in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Lynn, Fish and Wildlife Biologist (see **ADDRESSES**); telephone: 251–441–5868.

SUPPLEMENTARY INFORMATION:

Introduction

We announce the availability of two proposed low-effect habitat conservation plans (HCP), which analyze the take of the Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM) incidental to construction of 19 single-family homes by West Beach LLC on a 1.02-acre lot and construction of single-family home by Charles M. Smith on a 0.39 acre lot in Gulf Shores, Alabama. The applicants request incidental take permits (ITP) under section 10(a)(1)(B) of the Endangered Species Act (Act; 16 U.S.C. 1531 *et seq.*). If we approve these two ITP's, the West Beach LLC anticipates the taking of up to 1.02 acres of ABM habitat over a requested 25-year ITP, and Charles M. Smith anticipates the taking of up to 0.06 acre of ABM habitat over a 50-year ITP.

Applicants' Proposals

West Beach LLC

The applicant proposes to minimize and mitigate the take of up to 1.02 acres of ABM habitat at 1932 West Beach Boulevard, Gulf Shores, Alabama, by using routine ABM conservation measures at the proposed development (such as minimizing construction footprint, restoration of native vegetation, and measures to minimize effects to ABM during occupancy and use of the development) and by donating a 0.91-acre "inholding" lot of Bon Secour National Wildlife Refuge (BSNWR). The lot proposed for development currently has a single-family house on it and a large portion of the lot has been previously used as a construction storage yard. The lot proposed for mitigation is within the acquisition boundary of Bon Secour National Wildlife Refuge, and contains high-quality habitat and will be donated to the Alabama Coastal Heritage Trust (ACHT). ACHT will either place a conservation easement on the lot or eventually convey it to BSNWR.

Charles M. Smith

The applicant proposes to minimize and mitigate the take of up to 0.06 acres of ABM habitat at an inholding lot off Mobile Street within the Perdue Unit of Bon Secour National Wildlife Refuge (BSNWR), Gulf Shores, Alabama by using standard ABM conservation measures at the proposed development and by donating an "in-lieu" fee to the Friends of Bon Secour National Wildlife Refuge group (FBSNWR). The lot proposed for development currently is undeveloped, but will utilize an existing driveway to minimize impacts. The "in-lieu" fee will be donated to the FBSNWR group whom will use the fee to either managed, maintain, or acquire ABM habitat within the BSNWR Perdue Unit.

Our Preliminary Determination

We have made a preliminary determination that the applicants' projects, including the mitigation measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCPs. Therefore, our proposed issuance of the requested ITPs qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215).

We base our determination that issuance of each ITP qualifies as a low-effect action on the following three criteria: (1) Implementation of the project would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the project would result in minor or negligible effects on other environmental values or resources; and (3) Impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. As more fully explained in our environmental action statement and associated Low-Effect Screening Form, the applicant's proposed project qualifies as a "low-effect" project. This preliminary determination may be revised based on our review of public comments that we receive in response to this notice.

Public Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you wish to comment, you may submit comments by any one of several methods. Please reference TE84215B–0 (West Beach LLC), or TE84216B–0 (Charles M. Smith) in such comments. You may mail comments to the Fish and Wildlife Service's Alabama Field Office (see **ADDRESSES**). You may also comment via the internet to *william_lynn@fws.gov*. Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Finally, you may hand-deliver comments to the office listed under **ADDRESSES**.

Covered Area

The area encompassed by the HCPs and applications is the 1.02-acre lot located at 1932 West Beach Boulevard, and the 0.39-acre inholding lot located in the Perdue Unit of Bon Secour National Wildlife Refuge, in Gulf Shores, Alabama.

Next Steps

We will evaluate the ITP applications, including the HCP's and any comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If we determine that the requirements are met, we will issue the ITPs for the incidental take of ABM habitat.

Authority

We provide this notice under Section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: May 18, 2016

William J. Pearson,

Field Supervisor, Alabama Field Office.

[FR Doc. 2016–12159 Filed 5–23–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP0000 L91450000.PP0000 16XL5573PF]

Notice of Public Meeting, Pecos District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, Bureau of Land Management's (BLM) Pecos District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC will meet on June 30, 2016, at Concho Resources, 2208 West Main Street, Artesia, New Mexico, from 9:00 a.m.–3:00 p.m. The public may send written comments to the RAC at the BLM Pecos District, 2909 West 2nd Street, Roswell, New Mexico 88201.

FOR FURTHER INFORMATION CONTACT: Howard Parman, Pecos District Office, Bureau of Land Management, 2909 West 2nd Street, Roswell, New Mexico 88201, 575–627–0212. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Pecos District RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM's Pecos District. Planned agenda items include: A presentation of the Draft Carlsbad Resource Management Plan/Environmental Impact Statement; a review of the Lesser Prairie-Chicken ACEC Activity Plan; modifications to the business plan for the Rob Jaggers Campground; a discussion of BLM workload changes due to drop in oil prices; the status of public land along the upper Black River; a presentation of BLM's proposed venting and flaring rule; and a presentation of proposed projects under the Restore New Mexico program.

All RAC meetings are open to the public. There will be a half-hour public comment period at 9:30 a.m. for any interested members of the public who wish to address the RAC. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited.

Melanie Barnes,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2016–12158 Filed 5–23–16; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDC00000.15XL1109AF. L10200000.DS000.LXSSD0090000.241A; 4500075335]

Notice of Availability of the Proposed Cottonwood Resource Management Plan Amendment for Domestic Sheep Grazing and Final Supplemental Environmental Impact Statement, Idaho

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan

(RMP) Amendment for Domestic Sheep Grazing and Final Supplemental Environmental Impact Statement (EIS) for the Cottonwood Field Office and by this notice is announcing its availability.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed RMP Amendment/Final Supplemental EIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its notice of availability in the **Federal Register**.

ADDRESSES: Copies of the Proposed RMP Amendment/Final Supplemental EIS have been sent to affected Federal, State, and local government agencies and to other stakeholders, including the Nez Perce Tribe. Copies of the Proposed RMP Amendment/Final Supplemental EIS are available for public inspection at the Cottonwood Field Office, 1 Butte Drive, Cottonwood, ID 83522, phone 208–962–3245. Interested persons may also review the Proposed RMP/Final EIS on the Internet at *http://www.blm.gov/id/st/en/Districts-Idaho/CDA.html*. All protests must be in writing and mailed to one of the following addresses:

- *Regular Mail:* BLM Director (210), Attention: Protest Coordinator, P.O. Box 71383, Washington, DC 20024–1383.
- *Overnight Delivery:* BLM Director (210), Attention: Protest Coordinator, 20 M Street SE., Room 2134LM, Washington, DC 20003

FOR FURTHER INFORMATION CONTACT: Scott Pavey, telephone: (208) 769–5059; address: BLM Coeur d'Alene District, Schreiber Way, Coeur d'Alene, ID 83815; email: *blm_id_sheepseis@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the individual above during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM proposes to amend the 2009 Cottonwood RMP by providing new management direction and allocations for livestock grazing on 19,405 acres of BLM lands within four BLM allotments in Idaho and Adams Counties in Idaho.

In August 2008, the BLM published the Proposed Cottonwood RMP and Final EIS and subsequently received a number of protests on the proposed decision. The Director of the BLM denied all protest issues except one, which was in regard to the adequacy of the range of alternatives for management of domestic sheep grazing on four BLM allotments that are within bighorn sheep habitat. Specifically, the Director found that the Final EIS did not include an adequate range of alternatives to address potential disease transmission from domestic sheep and goats to bighorn sheep, and remanded decisions in the Proposed RMP for managing grazing in four allotments to the State Director to complete a Supplemental EIS that would include a reasonable range of alternatives for planning decisions for managing livestock grazing and that would analyze the impacts of domestic sheep and goat grazing within the four allotments. The Director further specified that the Supplemental EIS would be for the limited purpose of analyzing the impacts of domestic sheep and goat grazing within the four allotments.

The Supplemental EIS identifies and analyzes three related planning issues:

(1) Bighorn Sheep—Domestic sheep and goats may contact and transmit diseases to bighorn sheep, which may be a contributing factor to the downward trend in bighorn populations.

(2) Native American Tribal Interests and Treaty Rights—BLM management of livestock grazing, specifically domestic sheep and goats, may affect the availability of resources and uses (specifically related to bighorn sheep) that are important to the interests and rights of the Nez Perce Tribe.

(3) Livestock Grazing and Social and Economic Interests—Changes to BLM management of livestock grazing may affect the local economy.

Comments on the Draft RMP Amendment/Draft Supplemental EIS received from the public and internal BLM review were considered and incorporated as appropriate into the proposed plan amendment. Analysis of public comments did not result in significant changes to the proposed land use plan decisions, but did lead to the following changes in the analysis: (1) Elimination of an analytical assumption that identified a threshold for inter-species contact resulting in disease outbreak; (2) Replacement of reference to effects on bighorn sheep "population persistence" with effects on population "trends" and "sustainability;" (3) Consideration of two additional alternatives which were eliminated from detailed analysis; (4) Updates to modeling data; (5) Citations of additional and current scientific literature; (6) Clarifications regarding how an area along the Little Salmon River, which does not have a distinct herd, was considered; and (7) Information regarding the recent designation of bighorn sheep as a BLM Idaho sensitive species. Instructions for filing a protest with the Director of the BLM regarding the Proposed RMP/Final EIS may be found in the "Dear Reader" Letter of the Proposed RMP Amendment/Final Supplemental EIS and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Emailed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the emailed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to *protest@blm.gov*.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5

Timothy M. Murphy,
Idaho State Director.

[FR Doc. 2016–12360 Filed 5–20–16; 4:15 pm]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–018]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 8, 2016 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1070B (Second Review)(Certain Tissue Paper Products from China). The Commission

is currently scheduled to complete and file its determination and views of the Commission on June 21, 2016.

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 19, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–12216 Filed 5–20–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Personal Transporters, Components Thereof, and Packaging and Manuals Therefor DN 3148;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Segway, Inc.; DEKA Products Limited Partnership; and Ninebot (Tianjin) Technology co., Ltd. on May 18, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain personal transporters, components thereof, and packaging and manuals therefor. The complaint names as respondents Inventist, Inc. of Camas, WA; PhunkeeDuck, Inc. of Floral Park, NY; Razor USA LLC of Cerritos, CA; Swagway LLC of South Bend, IN; Segaway of Studio City, CA; and Jetson Electric Bikes LLC. The complainant requests that the Commission issue a general exclusion order, a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3148") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

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[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

Issued: May 19, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–12190 Filed 5–23–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PDES, INC.

Notice is hereby given that, on April 20, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PDES, Inc. ("PDES"), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Airbus, Blagnac, FRANCE; BAE Systems, London, UNITED KINGDOM; Boeing Company, Seattle, WA; Boost Conseil, Paris, FRANCE; Capvidia, Leuven, BELGIUM; CT Core Technologie, Southfield, MI; Dassault Systemes, Provence, FRANCE; Embraer, São Paulo, BRAZIL; Engesis, Rome, ITALY; Eurostep Limited, Stockholm, SWEDEN; General Electric, Cincinnati, OH; Georgia Institute of Technology, Atlanta, GA; Goodrich, Ontario, CANADA; Gulfstream Aerospace, Savannah, GA; Honeywell, Phoenix, AZ; International TechneGroup Incorporated (formerly ITI TranscenData), Milford, OH; JOTNE EPM Technology, Oslo, NORWAY; LKSoftWare GmbH, Kuenzell, GERMANY; Lockheed Martin Aeronautics, Ft. Worth, TX; NARA, Rocket Center, WV; NASA, Huntsville, AL; NIST, Gaithersburg, MD; OSD ManTech, Redstone Arsenal, AL; PTC, Blaine, ME; Purdue University, West Lafayette, IN; Sandia National Labs, Albuquerque, NM; Theorem Solutions, Staffordshire, UNITED KINGDOM; and University of South Carolina, Columbia, SC, have been added as parties to this venture.

In addition, the following parties have withdrawn as parties to this venture: Watervliet Arsenal/Tobyhanna Army Depot, Watervliet, NY; CostVision, Boulder, CO; Delphi Delco Electronics, Kokomo, IA; DoD/RAMP, Crane, IN; General Dynamics Electric Boat Division, Groton, CT; Ford Motor Company, Dearborn, MI; General Motors Corporation, Warren, MI; IBM Corporation, Southburg, CT; IDA Inc., Westchester, IL; Integrated Support Systems, Inc., Clemson, SC; MacNeal-Schwendler Corporation, Los Angeles, CA; Northrop Grumman Corporation, Pico Rivera, CA; Parametrics Technology Corporation, Waltham, MA; Rockwell Collins, Cedar Rapids, IA; Rolls Royce plc, Derby, UNITED KINGDOM; STEP Tools Inc., Troy, NY; and United Technologies Corporation/Pratt & Whitney, Hartford, CT.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PDES intends to file additional written notifications disclosing all changes in membership.

On September 20, 1988, PDES filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 14, 1988 (53 FR 40282).

The last notification was filed with the Department on August 26, 1998. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 28, 1999 (64 FR 4470).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–12189 Filed 5–23–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Advanced Combustion Catalyst and Aftertreatment Technologies

Notice is hereby given that, on April 25, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute—Cooperative Research Group on Advanced Combustion Catalyst and Aftertreatment Technologies ("AC^{2}AT") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Doosan Infracore, Incheon, KOREA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AC^{2}AT intends to file additional written notifications disclosing all changes in membership.

On March 20, 2015, AC^{2}AT filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 30, 2015 (80 FR 24277).

The last notification was filed with the Department on March 15, 2016. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 14, 2016 (81 FR 22119).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–12187 Filed 5–23–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Platform for NFV Project, Inc.

Notice is hereby given that, on May 2, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Platform for NFV Project, Inc. ("Open Platform for NFV Project") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Okinawa Open Laboratory, Uruma City, Okinawa, JAPAN; and Synchromedia Laboratory, Ecole de technologie superieure, Montreal, Quebec, CANADA, have been added as parties to this venture.

Also, Stratus Technologies, Inc., Maynard, MA; Midokura USA Inc., San Francisco, CA; Broadcom Corporation, Irvine, CA; and Altera Corporation, San Jose, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open Platform for NFV Project intends to file additional written notifications disclosing all changes in membership.

On October 17, 2014, Open Platform for NFV Project filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 14, 2014 (79 FR 68301).

The last notification was filed with the Department on February 16, 2016. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 21, 2016 (81 FR 15122).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–12185 Filed 5–23–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODPI, Inc.

Notice is hereby given that, on April 29, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ODPi, Inc. ("ODPi") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Linaro Limited, Harston, Cambridge, UNITED KINGDOM; and Cask Data, Inc., Palo Alto, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODPi intends to file additional written notifications disclosing all changes in membership.

On November 23, 2015, ODPi filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 23, 2015 (80 FR 79930).

The last notification was filed with the Department on February 8, 2016. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 9, 2016 (81 FR 12528).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–12188 Filed 5–23–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Oil Pollution Act of 1990

On May 18, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Maine in the lawsuit entitled *United States of America and State of Maine* v. *Chevron U.S.A. Inc., Texaco Inc., Chevron Environmental Management Company, Cumberland Farms, Inc., and Gulf Oil Limited Partnership,* Civil Action No. 1:16-cv-00256–DBH.

In the Complaint, Plaintiffs allege that the Defendants are liable to the United States and the State of Maine under Section 1002(a) and (b) of the Oil Pollution Act of 1990, 33 U.S.C. 2702 (a) and (b), and to the State of Maine under the Maine Oil Discharge Prevention and Pollution Control Law, 38 M.R.S. § 552, for damages for injury to, destruction of, loss of, or loss of use of, Natural Resources, including the reasonable cost of assessing the damages, resulting from discharges of oil that occurred starting at least as early as the 1970s at the former Chevron and Texaco marine oil terminal facilities located, respectively, at 799 and 809 Main Road North in Hampden, Maine. The Consent Decree requires the Defendants to pay $880,000 to be used by the Plaintiffs for restoration of Natural Resources, and $42,862 to the United States for reimbursement of Natural Resource Damages assessment costs.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and State of Maine* v. *Chevron U.S.A. Inc., Texaco Inc., Chevron Environmental Management Company, Cumberland Farms, Inc., and Gulf Oil Limited Partnership,* D.J. Ref. No. 90–11–3–11302. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email ...	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611 Washington, D.C. 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $7.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2016–12170 Filed 5–23–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–91,205]

KBR, Inc., Including On-Site Leased Workers From Technical Staffing Resources Including Workers Whose Wages Are Reported Under Kellogg, Brown, and Root, LLC; KBR Technical Services, Inc.; BR Industrial Operations, LLC; Brown & Root Industrial Services, LLC, and Technical Staffing Resources, Ltd. Houston, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 3, 2016, applicable to workers and former workers of KBR, Inc., Houston, Texas (subject firm). The Department's notice of determination was published in the **Federal Register** on February 25, 2016 (81 FR 9511).

At the request of the State of Texas, the Department reviewed the certification for workers of the subject firm. The State's assertion that workers of the subject firm have wages reported under different names has been confirmed.

Based on these findings, the Department is amending this certification to include workers whose wages are reported under: Kellogg, Brown, and Root, LLC; KBR Technical Services, Inc.; BR Industrial Operations, LLC; Brown & Root Industrial Services, LLC, and Technical Staffing Resources, Ltd.

The amended notice applicable to TA–W–91,205 is hereby issued as follows:

> All workers of KBR, Inc., including on-site leased workers from Technical Staffing Resources, and including workers whose wages are reported under Kellogg, Brown, and Root, LLC; KBR Technical Services, Inc.; BR Industrial Operations, LLC; Brown & Root Industrial Services, LLC, and Technical Staffing Resources, Ltd., Houston, Texas, who became totally or partially separated from employment on or after December 8, 2014 through February 3, 2018, and all workers in the group threatened with total or partial separation from employment on December 8, 2014 through February 3, 2018, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 10th day of May, 2016.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–12090 Filed 5–23–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

TA–W–85,954, Baker Hughes Incorporated Including On-Site Leased Workers From Kelly Services, Claremore, Oklahoma; TA–W–85,954A, Baker Hughes Incorporated, Broken Arrow, Oklahoma; TA–W–85,954B, Baker Hughes Incorporated, Hampton, Arkansas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 29, 2015, applicable to workers of Baker Hughes Incorporated, Claremore, Oklahoma (TA–W–85,954), Baker Hughes Incorporated, Broken Arrow, Oklahoma (TA–W–85,954A), and Baker Hughes Incorporated, Hampton, Arkansas (TA–W–85,954B). The Department's notice of determination was published in the **Federal Register** on September 22, 2015 (80 FR 57220).

At the request of a worker, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the production of oil field tools (pumps, motors, seals, safety valves, and composite plugs).

The company reports that workers leased from Kelly Services were employed on-site at the Claremore, Oklahoma location of Baker Hughes Incorporated. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Kelly Services working on-site at Claremore, Oklahoma location of Baker Hughes Incorporated.

The amended notice applicable to TA–W–85,954 is hereby issued as follows:

> "All workers of Baker Hughes Incorporated, including on-site leased workers from Kelly Services, Claremore, Oklahoma (TA–W–85,954), Baker Hughes Incorporated, Broken Arrow, Oklahoma (TA–W–85,954A), and Baker Hughes Incorporated, Hampton, Arkansas (TA–W–85,954B), who became totally or partially separated from employment on or after April 22, 2014 through July 29, 2017, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 19th day of April, 2016.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–12093 Filed 5–23–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85, 302]

Kimberly Carbonates, LLC, a Wholly Owned Subsidiary of Omya, Inc., Including On-Site Leased Workers From US Tech Force, Kimberly, Wisconsin; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 16, 2014, applicable to workers of Kimberly Carbonates, LLC, a wholly owned subsidiary of Omya, Inc., Kimberly, Wisconsin (subject firm). The Department's notice of determination was published in the **Federal Register** on August 7, 2014 (79 FR 46278). The workers were engaged in activities related to the production of ground calcium carbonate.

At the request of a State of Wisconsin, the Department reviewed the certification for workers of the subject firm.

The State asserts that workers leased from US Tech Force were employed on-site at the Kimberly, Wisconsin location of Kimberly Carbonates, LLC. The Department has determined that these workers were sufficiently under the control of the subject firm.

Based on these findings, the Department is amending this certification to include workers leased from US Tech Force working on-site at the Kimberly, Wisconsin location of Kimberly Carbonates, LLC.

The amended notice applicable to TA–W–85,302 is hereby issued as follows:

> All workers of Kimberly Carbonates, LLC, a wholly owned subsidiary of Omya, Inc., including on-site leased workers from US Tech Force, Kimberly, Wisconsin, who became totally or partially separated from employment on or after May 12, 2013 through July 16, 2016, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 19th day of April, 2016.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–12091 Filed 5–23–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,286A]

United States Steel Corporation, Fairfield Works-Flat Roll Operations and Fairfield-Tubular Operations Including On-Site Leased Workers From Total Safety US, Fairfield, Alabama; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 2, 2014, applicable to workers and former workers of United States Steel Corporation, Lorain Tubular Operations, Lorain, Ohio. On May 22, 2015, the Department issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to workers and former workers of United States Steel Corporation, Fairfield Works-Flat Roll and Fairfield-Tubular Operations, Fairfield, Alabama (TA–W–85,286A). The workers are engaged in activities related to the production of steel tubular products such as pipes and include those who are engaged in activities related to production, such as maintenance, administrative support, safety, and security.

Subsequent to the issuance of the amended certification, the Department received information that workers of Total Safety US worked on-site at the Fairfield, Alabama facility.

Based on these findings, the Department is amending this certification to clarify that the worker group at United States Steel Corporation, Fairfield Works-Flat Roll and Fairfield-Tubular Operations, Fairfield, Alabama (TA–W–85,286A) includes on-site workers from Total Safety US. The amended notice applicable to TA–W–85,286A is hereby issued as follows:

> All workers of United States Steel Corporation, Fairfield Works-Flat Roll Operations and Fairfield-Tubular Operations, including on-site workers leased workers from Total Safety US, Fairfield, Alabama (TA–W–85,286A), who became totally or partially separated from employment on or after May 2, 2013 through July 2, 2016 are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 30th day of March, 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–12089 Filed 5–23–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than June 3, 2016.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 3, 2016. The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 2nd day of May 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[127 TAA petitions instituted between 3/28/16 and 4/29/16]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
91632	Sanofi-aventis, US LLC (Company)	Kansas City, MO	03/28/16	03/25/16
91633	Maersk Agency USA, Inc. (Company)	Charlotte, NC	03/28/16	03/25/16
91634	Caterpillar (State/One-Stop)	Santa Fe, NM	03/29/16	03/28/16
91635	Emerson Process Management, Rosemount Inc. (State/One-Stop).	Eden Prairie, MN	03/29/16	03/28/16
91636	Alorica (State/One-Stop)	Albuquerque, NM	03/29/16	03/28/16
91637	Georgia Chair Company (Company)	Gainesville, GA	03/29/16	03/28/16
91638	EMC Corporation (State/One-Stop)	Hopkinton, MA	03/29/16	03/29/16
91639	FMC Measurement Solutions (Workers)	Erie, PA	03/30/16	03/29/16
91640	NCS Pearson Inc. (State/One-Stop)	Boomington, MN	03/30/16	03/29/16
91641	General Electric (GE) (State/One-Stop)	Fort Edward, NY	03/30/16	03/29/16
91642	Wells Fargo and Company c/o Barnett Associates, Inc. (Workers).	Diamond Bar, CA	03/30/16	03/29/16
91643	Ethnotek (State/One-Stop)	Eagan, MN	03/30/16	03/29/16
91644	Qualcomm (Workers)	San Diego, CA	03/30/16	03/18/16

APPENDIX—Continued

[127 TAA petitions instituted between 3/28/16 and 4/29/16]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
91645	ITT Cannon, LLC (State/One-Stop)	Santa Ana, CA	03/31/16	03/30/16
91646	Matrox International Ltd. (State/One-Stop)	Plattsburgh, NY	03/31/16	03/30/16
91647	Ingersoll Rand Engineered Centrifugal Compression (Union).	Buffalo, NY	03/31/16	03/28/16
91648	Ciena Corporation (C3) (Workers)	Linthicum, MD	03/31/16	03/29/16
91649	Vigo Coal Company (Workers)	Mt. Carmel, IL	03/31/16	03/22/16
91650	LCC International, Inc. Subsidiary of Tech Mahindra (State/One-Stop).	Overland Park, KS	04/01/16	03/31/15
91651	DME Co., LLC, A Subsidiary of Milacron, LLC (Workers)	Madison Heights, MI	04/01/16	03/31/16
91652	Mary's River Lumber Company (State/One-Stop)	Corvallis, OR	04/01/16	03/31/16
91653	Royal Ingredients, LLC (State/One-Stop)	Swedesboro, NJ	04/01/16	03/31/16
91654	WKW Roof Rail Systems (Company)	Battle Creek, MI	04/01/16	03/31/16
91655	Baker Hughes—Wireline Services US Land—Southern Geomarket (State/One-Stop).	Victoria, TX	04/04/16	04/01/16
91656	SL Montevideo Technology, Inc. (State/One-Stop)	Montevideo, MN	04/04/16	04/01/16
91657	Hewlett Packard Enterprises (Workers)	Tulsa, OK	04/04/16	04/01/16
91658	Coyne International Enterprises Corp. (State/One-Stop)	Syracuse, NY	04/04/16	04/01/16
91659	Whiting Paper Company (Union)	Menasha, WI	04/04/16	04/01/16
91660	FirstSource Solutions (State/One-Stop)	Louisville, KY	04/04/16	04/01/16
91661	E.W. Bowman, Inc. (Workers)	Uniontown, PA	04/05/16	04/04/16
91662	Alcoa-Howmet Corporation (Union)	Whitehall, MI	04/05/16	04/04/16
91663	Mississippi Tank Co. (Workers)	Vincennes, IN	04/05/16	04/04/16
91664	Noranda Aluminium Holding Corporation (State/One-Stop)	New Madrid, MO	04/05/16	04/04/16
91665	BT Americas (State/One-Stop)	New York, NY	04/06/16	04/04/16
91666	Haymarket Media (State/One-Stop)	York, PA	04/06/16	04/05/16
91667	Standard Motor Products, Inc., Temperature Control Div. (Company).	Grapevine, TX	04/06/16	04/05/16
91668	Cengage Learning, Inc., Custom Production Division (State/One-Stop).	Mason, OH	04/06/16	04/05/16
91669	Universal Oil Products (State/One-Stop)	Des Plaines, IL	04/06/16	04/05/16
91670	LPL Financial LLC (State/One-Stop)	San Diego, CA	04/07/16	04/06/16
91671	DB SCHENKER (Workers)	El Paso, TX	04/07/16	04/06/16
91672	Connor Manufacturing Services (State/One-Stop)	Fairview, OR	04/07/16	04/06/16
91673	Climax Manufacturing Co. (Union)	Lowville, NY	04/07/16	04/06/16
91674	Xerox (State/One-Stop)	Cherry Hill, NJ	04/08/16	04/06/16
91675	Toys R Us (State/One-Stop)	Wayne, NJ	04/08/16	04/06/16
91676	Talentwise, a Sterling Backcheck Company (Company)	Winchester, VA	04/08/16	04/06/16
91677	Vam USA (Company)	Houston, TX	04/08/16	04/01/16
91678	GE Oil and Gas (Company)	Avon, MA	04/11/16	04/05/16
91679	Alleson Athletic (State/One-Stop)	Rochester, NY	04/11/16	04/08/16
91680	Ketchum, Inc. (Company)	Pittsburgh, PA	04/11/16	04/08/16
91681	Mikco Manufacturing Technology Inc. (State/One-Stop)	Wallingford, CT	04/11/16	04/08/16
91682	Recreational Equipment Inc. (REI) (Workers)	Kent, WA	04/11/16	04/09/16
91683	Pride of The Hills Manufacturing Inc. (Workers)	Killbuck, OH	04/12/16	04/11/16
91684	Abbott Laboratories (Workers)	Abbott Park, IL	04/12/16	04/11/16
91685	Sulzer Pumps (US) Inc/Sulzer Bingham Pumps (State/One-Stop).	Portland, OR	04/12/16	04/11/16
91686	Custom Stamping & MFG. Co. (State/One-Stop)	Portland, OR	04/12/16	04/11/16
91687	D&L Oil Tools (Workers)	Tulsa, OK	04/13/16	04/04/16
91688	Ceres Crystal Industries Inc. (Workers)	Niagara Falls, NY	04/13/16	04/06/16
91689	Warm Springs Forest Products (State/One-Stop)	Warm Springs, OR	04/13/16	04/12/16
91690	MEMC Pasadena Inc. a subsidiary of Sun Edison (Workers).	Pasadena, TX	04/13/16	03/22/16
91691	SunEdison (State/One-Stop)	Pasadena, TX	04/13/16	04/12/16
91692	Superior Graphite Company (State/One-Stop)	Russellville, AR	04/13/16	04/12/16
91693	Hudson Jeans (State/One-Stop)	Commerce, CA	04/13/16	04/12/16
91694	Transtector Systems (Company)	Hayden, ID	04/13/16	04/12/16
91695	Galey and Lord (Company)	Society Hill, SC	04/13/16	04/12/16
91696	Jasper Engineering & Equipment (State/One-Stop)	Hibbing, MN	04/14/16	04/13/16
91697	Oracle (State/One-Stop)	Denver, CO	04/14/16	04/13/16
91698	Texas & Northern Railway Company (Workers)	Lonestar, TX	04/14/16	04/13/16
91699	Hexcel Corporation (Union)	Kent, WA	04/14/16	04/12/16
91700	Manitowoc FS6 Operations, LLC (Union)	Manitowoc, WI	04/14/16	04/04/16
91701	Clover Technologies Group LLC (State/One-Stop)	Ithaca, MI	04/14/16	04/11/16
91702	Trillium Staffing Agency (State/One-Stop)	East Tawas, MI	04/14/16	04/13/16
91703	Polar Tank Trailer (State/One-Stop)	Springfield, MO	04/14/16	04/13/16
91704	ITT Cannon (State/One-Stop)	Santa Ana, CA	04/15/16	04/14/16
91705	D+H USA Corp/Harland Financial Solutions Inc. (State/One-Stop).	Portland, OR	04/15/16	04/14/16
91706	General Fasteners (State/One-Stop)	Riverton, IA	04/15/16	04/14/16

APPENDIX—Continued

[127 TAA petitions instituted between 3/28/16 and 4/29/16]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
91707	Hewlett Packard Enterprise, ES ITO Network Delivery (State/One-Stop).	Plano, TX	04/15/16	04/14/16
91708	Cambridge Metals & Plastics, A Division of Water Works Manufacturing (State/One-Stop).	Cambridge, MN	04/15/16	04/14/16
91709	Avery Dennison (State/One-Stop)	Chicopee, MA	04/15/16	04/15/16
91710	Honeywell Inc. (Union)	Danville, IL	04/18/16	04/18/16
91711	Broadcom Ltd. (was known as Avago Technologies) (State/One-Stop).	Norcross, CO	04/18/16	04/15/16
91712	EVRAZ Rocky Mountain Steel (Company)	Pueblo, CO	04/18/16	04/15/16
91713	Roseburg Forest Products (Union)	Medford, OR	04/18/16	04/15/16
91714	United Technologies Electronic Controls, Inc. (Company)	Huntington, IN	04/20/16	04/19/16
91715	AECOM (State/One-Stop)	Boise, ID	04/20/16	04/19/16
91716	Trican Well Services (State/One-Stop)	Odessa, TX	04/20/16	04/19/16
91717	3M (Company)	Milford, OH	04/20/16	04/20/16
91718	ITW Medical—Coeur Inc. (Workers)	Sheboygan, WI	04/20/16	04/18/16
91719	American Light Bulb MFG. (Company)	Mullins, SC	04/21/16	04/21/16
91720	Caterpillar Inc. Danville (Company)	Danville, KY	04/21/16	02/15/16
91721	YellowPages Group/Yellow Pages Digital & Media Solution LLC (Workers).	Indianapolis, IN	04/22/16	04/22/16
91722	Labinal Power Systems a subsidiary of Safran (State/One-Stop).	Everett, WA	04/22/16	04/20/16
91723	AVX Corporation (Company)	Olean, NY	04/22/16	04/21/16
91724	Newpark Drilling Fluids LLC (State/One-Stop)	Katy, TX	04/22/16	04/21/16
91725	GE Transportation (Union)	Erie, PA	04/22/16	04/21/16
91726	Chemtrade Performance Chemicals LLC (Company)	Kalama, WA	04/22/16	04/21/16
91727	Cargill (State/One-Stop)	Hopkins, MN	04/22/16	04/21/16
91728	Bank of America (State/One-Stop)	Chandler, AZ	04/22/16	04/21/16
91729	ACI Worldwide, Inc. (State/One-Stop)	Elkhorn, NE	04/25/16	04/22/16
91730	Assembled Products (State/One-Stop)	Buffalo Grove, IL	04/25/16	04/22/16
91731	Bank of America Corporation (Workers)	Simi Valley, CA	04/25/16	04/22/16
91732	Sandvik (State/One-Stop)	Brooklyn Center, MN	04/25/16	04/22/16
91733	H.C. Haynes Inc. (State/One-Stop)	Winn, ME	04/26/16	04/26/16
91734	Ralph Lauren Corp (Workers)	Greensboro, NC	04/26/16	04/26/16
91735	Parker Hannifin Corp.—Hose Division (State/One-Stop)	Deerwood, MN	04/26/16	04/25/16
91736	The Timken Company Altavista Bearing Plant (Workers)	Altavista, VA	04/26/16	04/18/16
91737	Alex Apparel Group, Inc. (Workers)	New York, NY	04/26/16	04/25/16
91738	IBM Global Technology Services (State/One-Stop)	Poughkeepsie, NY	04/27/16	04/22/16
91739	L.S. Starrett Company (Company)	Mt. Airy, NC	04/27/16	04/22/16
91740	Xerox Opb (State/One-Stop)	Wilsonville, OR	04/27/16	04/22/16
91741	Precision Computer Services (PCS) (State/One-Stop)	Shelton, CT	04/27/16	04/22/16
91742	General Electric (GE) (Union)	Ft. Edward, NY	04/27/16	04/22/16
91743	Datex-Ohmeda, Inc. DBA—GE Healthcare (Union)	Madison, WI	04/27/16	04/26/16
91744	Valspar Corp—Plastikote (Workers)	Medina, OH	04/27/16	04/26/16
91745	Devon Energy (State/One-Stop)	Oklahoma City, OK	04/27/16	04/26/16
91746	PetroChoice (State/One-Stop)	Chisholm, MN	04/27/16	04/26/16
91747	Beitzel Corportation/Pillar Innovation (State/One-Stop)	Grantsville, MD	04/28/16	04/27/16
91748	Dana Holding Corporation (Union)	Glasgow, KY	04/28/16	04/27/16
91749	Premise Health (State/One-Stop)	Brentwood, TN	04/28/16	04/27/16
91750	NW Signal Traffic/Signal Group/Peek Traffic (State/One-Stop).	Tualatin, OR	04/28/16	04/27/16
91751	KeyTronicEMS (Company)	Harrodsburg, KY	04/28/16	04/27/16
91752	The State Newspaper (Owned by The McClatchy Company) (Workers).	Columbia, SC	04/28/16	04/27/16
91753	Epicor Software Corporation (State/One-Stop)	Hyannis, MA & Austin, TX	04/28/16	04/27/16
91754	QBE North America (State/One-Stop)	Bellevue, WA	04/28/16	04/27/16
91755	Kraft-Heinz (Workers)	Allentown, PA	04/29/16	04/28/16
91756	Schlumberger Technology Corporation (Workers)	Bakersfield, CA	04/29/16	04/28/16
91757	Lewis Bakery (Union)	Vincennes, IN	04/29/16	04/28/16
91758	Hawaiian Commercial & Sugar Company (HC&S) (Union)	Puunene, HI	04/29/16	04/26/16

[FR Doc. 2016–12092 Filed 5–23–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *March 28, 2016 through April 29, 2016*.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(e) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) not withstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
85,013	TRW Integrated Chassis Systems, LLC, North American Braking Division, TRW Automotive, Adecco and DM Burr.	Saginaw, MI	January 10, 2013.
85,439	Qualfon Data Services Group, LLC, 0002 Division, Catskill Consulting Services, LLC.	Deposit, NY	July 22, 2013
85,466	GrafTech International Holdings, Inc., Advanced Graphite Materials (AGM) Division.	Emporium, PA	August 5, 2013.

TA–W No.	Subject firm	Location	Impact date
85,505	Red Shield Acquisition, Old Town Fuel and Fiber	Old Town, ME	August 25, 2013.
85,885	HCL America Inc., Business Services Division	Cary, NC	March 18, 2014.
85,897	American Cotton Growers, American Textile Holdings, LLC, Plains Cotton Cooperative Association.	Littlefield, TX	February 28, 2015.
85,975	Regulator Technologies Tulsa, LLC, Emerson, Aerotek	Tulsa, OK	April 30, 2014.
86,003	CompuCom, Elevate Division	Bentonville, AR	May 8, 2014.
86,003A	CompuCom, Non-Elevate Division	Bentonville, AR	May 8, 2014.
90,023	WebCo Industries, Inc., Oklahoma Carbon	Sand Springs, OK	January 1, 2014.
90,231	Express Group Holdings, LLC, Tulsa Division, Switchgear Search and Recruiting, Acknowledge Staffing.	Tulsa, OK	January 1, 2014.
91,038	GC Services, Operator Services Project	El Paso, TX	October 7, 2014.
91,093	S and Y Industries, Inc	Winfield, KS	October 30, 2014.
91,279	Allegheny Ludlum LLC, ATI Flat Rolled Products, Bagdad Operations, Allegheny Technologies, etc.	Bagdad, PA	January 4, 2015.
91,335	Climax Portable Machine Tools, Inc., IGP, Robert Half Management Resources, Express Employment Professional.	Newberg, OR	January 12, 2015.
91,385	Tool-Rite, Inc	Springboro, PA	January 25, 2015.
91,402	Microfibres, Inc	Pawtucket, RI	January 28, 2015.
91,416	General Mills Operations, LLC, General Mills, Inc	Lodi, CA	February 1, 2015.
91,550	Microfibres, Inc., Monroe Staffing	Winston Salem, NC	March 3, 2015.
91,555	Time Machine, Inc	Polk, PA	March 27, 2016.
91,565	Bridgestone Americas Tire Operations LLC, Firestone AG Division, Vonachen Services, Inc., etc.	Des Moines, IA	February 17, 2015.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
85,009	Atos, Application Technical Services (ATS)	New York, NY	January 8, 2013.
85,016	Mid-West Textile, El Paso Staffing C/O JD Factors LLC	El Paso, TX	January 14, 2013.
85,035B	Hewlett Packard Company, LES Platform Enablement Lab, LaserJet Enterprise Solutions, Printing, etc.	Ft. Collins, CO	January 24, 2013.
85,183	Hyundai America Shipping Agency, Inc., Hyundai Merchant Marine America, Inc., Business Contract Solutions.	Itasca, IL	March 27, 2013.
85,195	Stream Global Services, Inc., Convergys Corporation, Stream International, Inc.	Sergeant Bluff, IA	April 1, 2013.
85,205	Digital Domain 3.0, Inc	Los Angeles, CA	April 2, 2013.
85,343	Risk Specialists Companies Insurance Agency, Inc., Lexington Insurance Underwriting Support, Property Casualty, etc.	Houston, TX	May 29, 2013.
85,772	Bank of America, Trade Finance Operations	Los Angeles, CA	January 20, 2014.
85,892	Dana Sealing Manufacturing, LLC, Power Technologies Division, Dana Holding Corporation, Manpower.	Robinson, IL	March 20, 2014.
85,941	CareFusion Resources, LLC, Technical Service Center, Extended Hours Team, CareFusion Corporation, etc.	San Diego, CA	April 14, 2014.
85,966	Sirius Computer Solutions, Inc., SCS Holdings I, Inc	San Antonio, TX	April 27, 2014.
86,100	Novartis Consumer Health, Inc., OTC (Over-The-Counter) Division, GlaxoSmithKline Consumer, Kelly, etc.	Lincoln, NE	July 30, 2015.
86,100A	Novartis Consumer Health, Inc., Animal Health Division, GlaxoSmithKline Consumer, Randstad, etc.	Lincoln, NE	June 16, 2014.
90,001	Midland Credit Management, San Diego Call Center, Encore Capital Group.	San Diego, CA	January 1, 2014.
90,006	Kanzaki Specialty Papers, Inc., United Personnel	Ware, MA	January 1, 2014.
90,052	Dyno Nobel Inc., Incitec Pivot Limited	Donora, PA	January 1, 2014.
90,246	Intel Corporation, Communications and Devices Group	Allentown, PA	January 1, 2014.
90,303	Hewlett Packard Company, Enterprise Services Division, Midrange Server Services.	Plano, TX	January 1, 2014.
90,305	Hewlett Packard Enterprise, ES Business Process Services Fulfillment and Logistics Division, XPO.	Des Moines, IA	January 1, 2014.
90,305A	Hewlett Packard Enterprise, ES Business Process Services Fulfillment and Logistics Division, XPO.	Des Moines, IA	January 1, 2014.
90,311	NTT Data, Inc., NTT Data Corporation	Montpelier, VT	January 1, 2014.
90,335	Keokuk Steel Castings, Matrix Metals LLC, Taske Force	Keokuk, IA	January 1, 2014.
91,011	Brown Brothers Harriman and Company, Forum Group, Marchon Partners.	Jersey City, NJ	September 20, 2014.
91,051	Carter Fuel Systems, Crowne Group LLC, Aerotek, Crossfire Group	Logansport, IN	October 1, 2014.
91,081	Print Media LLC, YP Southeast Advertising & Publishing, DCR Workforce.	Tucker, GA	October 23, 2014.
91,103	Avery Dennison Corporation, Retail Branding, Information Solutions Division.	Covina, CA	November 3, 2014.
91,114	Pickard, Inc	Antioch, IL	November 5, 2014.

TA–W No.	Subject firm	Location	Impact date
91,117	Altaimano, Continental Design and Engineering, Strategic Technical Solutions, etc.	Anderson, IN	November 8, 2014.
91,117A	Altaimano, Randstad F&A and Accountemps	Reno, NV	November 8, 2014.
91,118	Zurn Industries, LLC, Rexnord-Zurn Holdings, Inc	Erie, PA	November 8, 2014.
91,119	TAPI Puerto Rico, Teva Pharmaceuticals Industries LTD, Adecco, MSSS, etc.	Guayama, PR	November 9, 2014.
91,124	ARM, Inc., ARM Holding PLC, Development and Solutions Group, The Creative Group.	Olympia, WA	November 9, 2014.
91,126	Thomson Reuters, Tax and Accounting, Thomson Reuters U.S. LLC, Pontoon Solutions.	Valhalla, NY	November 6, 2014.
91,128	AirDye Solutions LLC	Harrisonburg, VA	November 3, 2014.
91,144	Micron Technology, Inc	Aguadilla, PR	December 4, 2015.
91,144A	U.S. Security Associates, Inc., Avnet, Future Electronics, GCA Service Group, Kelly Services.	Aguadilla, PR	November 16, 2014.
91,150	Avery Products Corporation, CCL Industries, Ambassador Personnel Inc.	Meridian, MS	November 17, 2014.
91,167	De-Sta-Co Industries, Dover Division, Reliance One	Auburn Hills, MI	October 27, 2014.
91,184	BI Technologies, Advanced Components Division, Kelly Services	Fullerton, CA	November 30, 2014.
91,187	SIHI Pumps, Inc., SIHI Groups	Grand Island, NY	December 1, 2014.
91,208	Lexmark International, Inc., Information Technology, Allegis Group Services.	Lexington, KY	December 9, 2014.
91,215	QBE Americas, Inc., QBE Holdings, Inc	Sun Prairie, WI	December 3, 2014.
91,262	WHG LLC, Wyndham Hotel Group, Wyndham Worldwide	Aberdeen, SD	December 22, 2014.
91,300	QBE Americas, Inc., Field OPS—Agri Processing Group, QBE Holdings, Inc.	Greenwood Village, CO	January 6, 2015.
91,307	LaCie Ltd, Aerotek and Ranstad	Tigard, OR	January 7, 2015.
91,354	Physician Reliance, LLC, US Oncology	Richardson, TX	January 15, 2015.
91,355	Ortho Organizers, Inc., Henry Schein, Inc., Marquee Staffing and Ultimate Staffing.	Carlsbad, CA	January 15, 2015.
91,374	Bose Corporation, Global Sales Division, Randstad	Westborough, MA	January 21, 2015.
91,388	L-Com, Inc., Connector Holding, Inc., Tech Needs North, Inc., etc	North Andover, MA	January 26, 2015.
91,418	OpSec Security, Inc., OpSec Security Group, Inc	Robbinsville, NJ	February 2, 2015.
91,445	Fenner Dunlop LLC, Time Staffing Inc	Port Clinton, OH	June 20, 2015.
91,445A	Cardinal Services Inc., Fenner Dunlop LLC	Port Clinton, OH	January 19, 2015.
91,458	Siemens Energy, Inc., PG DG PMF Division, Belcan Engineering	Mount Vernon, OH	February 8, 2015.
91,464	Roland Organ Corporation, Rodgers Instruments Corporation, Express Services, etc.	Hillsboro, OR	February 12, 2015.
91,476	Pall Corporation, Finance Organization, Accounts Payable and General Ledger.	Port Washington, NY	September 13, 2015.
91,477	X6D USA, Inc., X6D Limited	Beaverton, OR	February 17, 2015.
91,491	Alcoa Inc., Warrick Operations, Global Primary Products, Icon, Manpower.	Newburgh, IN	February 5, 2015.
91,492	mGage, LLC, Network Operations Center, The Berry Company, LLC	Los Angeles, CA	February 19, 2015.
91,497	Caldwell Hardware Co., Caldwell Manufacturing Company	Alderson, WV	February 18, 2015.
91,508	Dematic Corporation, Aerotek and Tradesman International	Grand Rapids, MI	February 16, 2015.
91,519	National Oilwell Varco, LP, Rig Systems, Offshore Division, iSymphony, LLC.	Houma, LA	February 25, 2015.
91,528	DTNA Cleveland Truck Manufacturing Plant, Daimler Trucks North America.	Cleveland, NC	August 20, 2015.
91,540	ET Manufacturing Corporation	Sartell, MN	March 2, 2015.
91,541	Bard Medical—Rochester, Bard Medical Division, C.R. Bard Inc., Masterson Staffing, etc.	Stewartville, MN	March 2, 2015.
91,542	UCI–FRAM Group, LLC/Autolite, Geometric Results Inc	Fostoria, OH	March 3, 2015.
91,549	W.W. Grainger, Inc., Janesville Facility Division, *Peoplescout.com*	Janesville, WI	March 3, 2015.
91,551	UTI Worldwide, DSV, Enterprise Information Technology, HCL	Portland, OR	March 4, 2015.
91,554	Polar Tank Trailer, American Industrial Partners	Holdingford, MN	March 4, 2015.
91,557	Hutchinson Technology Incorporated	Hutchinson, MN	March 4, 2015.
91,563	Measurement Specialties, Inc, TE Connectivity, Manpower	Beavercreek, OH	March 7, 2015.
91,581	Ocwen Loan Servicing, LLC, Ocwen Financial Corporation	Waterloo, IA	May 14, 2016.
91,581A	Kelly Vendor Management Services and Eurest Dining Service, Ocwen Loan Servicing, LLC, Ocwen Financial Corporation.	Waterloo, IA	March 11, 2015.
91,582	Hologic, Inc., IQ Pipeline, Microtech Staffing and Connexion Systems and Engineering.	Bedford, MA	March 11, 2015.
91,584	Dover Energy, Inc., Blackmer Division	Grand Rapids, MI	March 13, 2015.
91,589	Fujitsu America, Inc., Retail Management Services, Fujitsu Limited	Sunnyvale, CA	March 14, 2015.
91,591	Eaton Corporation, Industrial Sector, Hydraulics Group	Spencer, IA	March 14, 2015.
91,606	Big Heart Pet Brands, Inc., Research & Development Department	Terminal Island, CA	March 17, 2015.
91,624	International Business Machines Corporation (IBM), Software Platform Management Services Group, etc.	Armonk, NY	March 23, 2015.
91,633	Maersk Agency USA, Inc., Marine Operations Division	Charlotte, NC	March 25, 2015.
91,635	Emerson Process Management, Rosemount Inc., Rosemount Flow Division, Emerson Electric Company, Volt.	Eden Prairie, MN	March 28, 2015.
91,653	Royal Ingredients, LLC, ED&F Man, Aerotek, Lab Support, Horizon Systems, Jobs, 1st Choice, etc.	Swedesboro, NJ	March 31, 2015.

TA–W No.	Subject firm	Location	Impact date
91,656	SL Montevideo Technology, Inc., Aerotek, Spartan Staffing	Montevideo, MN	April 1, 2015.
91,661	E.W. Bowman, Inc	Uniontown, PA	April 4, 2015.
91,669	Universal Oil Products, Honeywell International Performance Materials and Technologies, etc.	Des Plaines, IL	April 5, 2015.
91,680	Ketchum, Inc., Omnicom Group, Inc., Finance Department	Pittsburgh, PA	April 8, 2015.
91,703	Polar Tank Trailer, American Industrial Partners	Springfield, MO	April 13, 2015.
91,723	AVX Corporation, Olean Advanced Products Division	Olean, NY	April 21, 2015.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
86,094	Optical Disc Solutions, Inc., Austerman Holdings, LLC, Manpower	Richmond, IN	June 15, 2014.
86,129	Frog, Switch, and Manufacturing Company	Carlisle, PA	June 19, 2014.
90,326	Auto Warehousing Company	Normal, IL	January 1, 2014.
91,152	PetroChoice, LLC	Chisholm, MN	November 17, 2014.
91,216	Custom Metal Finishers, Inc	Mountain View, MO	December 4, 2014.
91,227	Oakland Stamping LLC, L&W Group, Impact	Lake Orion, MI	December 14, 2014.
91,231	Sodecia North America	Lake Orion, MI	December 14, 2014.
91,320	Jamar Company	Duluth, MN	January 8, 2015.
91,324	Baldwin Supply Company	Hibbing, MN	January 8, 2015.
91,326	VanHouse Services, LLC	Silver Bay, MN	January 11, 2015.
91,345	Champion Charter Sales & Service, Gundlach Champion, Inc	Hibbing, MN	January 14, 2015.
91,429	Industrial Lubricant Company	Grand Rapids, MN	February 3, 2015.
91,430	Gardner Chipmills Millinocket, LLC	Millinocket, ME	February 3, 2015.
91,535	General Electric Company, GE Transportation Division, Adecco USA, TCS (TATA), Chemetall US Inc., etc.	Grove City, PA	March 1, 2015.
91,583	Dyno Nobel Inc., Incitec Pivot Limited	Biwabik, MN	March 11, 2015.
91,595	Vuteq USA, Inc., Illinois Division, Manpower, PeopleLink Staffing, Pridestaff.	Normal, IL	March 15, 2015.
91,602	Accuride Corporation, Wheels Division, Skills Employment Personnel	Camden, SC	March 16, 2015.

The following certifications have been issued. The requirements of Section 222(e) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
91,590	Madison Paper Industries, UPM-Kymmene Inc., and Northern SC Paper Corporation, WD Watthews, etc.	Madison, ME	December 9, 2014.
91,617	Boise White Paper, LLC, Boise, Inc., Boise Paper Holdings, LLC, Bartlett & Associates.	International Falls, MN	July 4, 2015.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1) or (b)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
85,035	Hewlett Packard Company, LaserJet Hardware, LaserJet Enterprise Solutions, Printing and Personal.	Ft. Collins, CO.	
85,035A	Hewlett Packard Company, Customer Assurance, LaserJet Enterprise Solutions, Printing and Personal.	Ft. Collins, CO.	
85,035C	Hewlett Packard Company, Industrial Design Group, LaserJet Hardware, etc.	Boise, ID.	
85,261C	Hibu Inc., Hibu Holding (USA), Inc., Aerotek, Insight Global, Inc., Office Team, etc.	Spokane Valley, WA.	
85,500	J.R. Simplot Company, Food Group Division, Scale House, Barrett Business Services, Inc. (BBSI).	Moses Lake, WA.	
85,500A	J.R. Simplot Company, Food Group Division, Barrett Business Services, Inc. (BBSI), Best Temporary.	Othello, WA.	
90,292	Wells Fargo Home Mortgage Servicing, Wells Fargo Consumer Lending Group, Aerotrek, AppleOne, Randstand, etc.	West Des Moines, IA.	

TA–W No.	Subject firm	Location	Impact date
90,293	Wells Fargo Home Mortgage, Wells Fargo Consumer Lending Group, Aerotek, ER Select, etc.	West Des Moines, IA.	
90,295	Wells Fargo Home Mortgage, Wells Fargo Consumer Lending Group, Aerotek, ER Select, etc.	Des Moines, IA.	
90,296	Wells Fargo Home Mortgage, Wells Fargo Consumer Lending Group, Aerotek, ER Select, etc.	Urbandale, IA.	
90,313	D+H USA Corporation, Finance Department, DH Corporation, Volt Services Group, RPG, KForce.	Portland, OR.	
91,025	YKK (U.S.A.) Inc., S&B Division, Quality Department, YKK Corporation of America.	Lawrenceburg, KY.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
85,020	FCI USA LLC, FCI Asia Pte. Ltd., JFC Staffing, The Drexel Group	Etters, PA.	
85,113	Rocktenn Company, Southeast Texas Business Unit, Grand Prairie Container.	Grand Prairie, TX.	
85,456	Microsoft Corporation	Redmond, WA.	
85,525	Amgen Inc	Longmont, CO.	
86,026	Gardner Denver, Tulsa Division, KKR, People Source	Tulsa, OK.	
86,057	Fairmount Santrol, FML Sand, Inc., Brewer Mine, Manpower	Perryville, MO.	
91,360	Amsted Rail Co., Inc., Amsted Industries Incorporated, Kelly Services, Accountemps, etc.	Granite City, IL.	
91,465	Traeger Pellet Grills, LLC, Corporate Office	Portland, OR.	
91,577	Lelege USA Corporation, TrendHR, ADP Total Source	Dallas, TX.	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
85,036	Kelsey-Hayes Company, TRW Automotive, Adecco Employment Services, Kelly Services, etc.	Sterling Heights, MI.	
85,099	Harrington Tool Company	Ludington, MI.	
85,102	Northport USA LLC, Northport Holdings Private Limited	Wilkes Barre, PA.	
85,109	Sharp Manufacturing Co. of America (SMCA), Sharp Electronics Corporation, Aerotek Commercial, etc.	Memphis, TN.	
85,115	Hoax Films, LLC, Digital Artist Agency	Los Angeles, CA.	
85,185	Broadridge Financial Solutions, Inc	Jersey City, NJ.	
85,194	Med-Fit Systems, Inc., Virginia Division	Independence, VA.	
85,371	Contacts Metals and Welding, Inc	Indianapolis, IN.	
85,413	Shine Electronics Company, Inc., Active Staffing, Segue Staffing	Long Island City, NY.	
85,419	Cinram Group Inc., Najafi Companies, Dynamic Staffing	Olyphant, PA.	
85,435	American IT Solutions, Help Desk, Boehringer Ingelheim	Danbury, CT.	
85,441	Keystone Calumet, Inc	Chicago Heights, IL.	
85,464	Exelis Incorporated, Night Vision & Communication Solutions (NVCS) Division, Tad PGS, etc.	Roanoke, VA.	
85,488	Sig Sauer, Inc., Key Partners, Inc., JVT Advisors, KBW Financial Staffing & Recruiting, etc.	Newington, NH.	
85,496	Remington Arms, Inc., Remington Outdoor Company, First Choice Staffing.	Ilion, NY.	
85,540	Quantum Spatial, Inc., Aero-Metric, Inc	Sheboygan, WI.	
85,595	Quad/Graphics, Woodstock Division, Quad/Graphics, Inc., Masterson Staffing Solutions.	Woodstock, IL.	
85,613	Midair USA Inc., Midair SA, Inka Tech, Aviation Recruitment Services	Rome, NY.	
85,661	AMFIRE Mining Company, LLC, Portage Plant, Alpha Natural Resources, David Stanley Consultants, etc.	Portage, PA.	
85,661A	Maxxim Shared Services, LLC, Alpha Natural Resources, Inc	Latrobe, PA.	
85,661B	AMFIRE Mining Company, LLC, Clymer Prep Plant, Alpha Natural Resources, Inc., David Stanley, Spherion.	Clymer, PA.	
85,661C	AMFIRE Mining Company, LLC, Clearfield Co. Strips Mine, Alpha Natural Resources, Inc.	Frenchville, PA.	
85,661D	AMFIRE Mining Company, LLC, Somerset Co. Surface Mine, Alpha Natural Resources, Inc.	Rockwood, PA.	
85,661E	AMFIRE Mining Company, LLC, Indiana County Mine, Alpha Natural Resources, Inc.	Indiana, PA.	
85,661F	AMFIRE Mining Company, LLC, Hamilton Shop, Alpha Natural Resources, Inc.	Hamilton, PA.	

TA–W No.	Subject firm	Location	Impact date
85,661G	AMFIRE Mining Company, LLC, Cambria Pitt 001 Mine, Alpha Natural Resources, Inc.	Mineral Point, PA.	
85,661H	AMFIRE Mining Company, LLC, Nolo Mine, Alpha Natural Resources, Inc., David Stanley, Spherion.	Penn Run, PA.	
85,661I	AMFIRE Mining Company, LLC, Ondo Extension Mine, Alpha Natural Resources, Inc., David Stanley, Spherion.	Indiana, PA.	
85,661J	AMFIRE Mining Company, LLC, Gilhouser Run Mine, Alpha Natural Resources, Inc., David Stanley, Spherion.	Homer City, PA.	
85,661K	AMFIRE Mining Company, LLC, Madison Mine, Alpha Natural Resources, Inc., David Stanley, Spherion.	Mineral Point, PA.	
85,661L	AMFIRE Mining Company, LLC, Centre County Strips, Alpha Natural Resources, Inc.	Philipsburg, PA.	
85,661M	AMFIRE Mining Company, LLC, Clearfield Tipple, Alpha Natural Resources, Inc.	Clearfield, PA.	
85,661N	AMFIRE Mining Company, LLC, Barrett Mine, Alpha Natural Resources, Inc., David Stanley, Spherion.	Homer City, PA.	
85,758	Oxane Materials, Inc., TEC Staffing	Van Buren, AR.	
85,781	Asahi America, Inc., Asahi Yukizai	Lawrence, MA.	
85,813	Tyson Foods, Inc., Prepared Foods Division	Santa Teresa, NM.	
85,849	Zemco Industries, Inc., Prepared Foods Division, Tyson Foods, Inc., Snelling, Aerotech & SPS Temps.	Buffalo, NY.	
85,921	Avaya, Inc., 8744 Lucent Boulevard, Global Support Services (GSS), Avaya Client Services.	Highlands Ranch, CO.	
86,002	Cameron, Valves & Measurement Division	Little Rock, AR.	
86,052	MI SWACO, A Schlumberger Company, Southwestern Wire Cloth Inc. Division, Schlumberger, Nesco Resource, etc.	Broken Arrow, OK.	
86,068	Rockwell Collins, Rockwell Collins, Inc., Shared Services Division, Allegis Group Services.	Calexico, CA.	
86,095	Essentra H&PC	Evansville, IN.	
86,097	Heritage Glass LLC, ACG Flat Glass North America, Inc., Heritage Manufacturing Company, Inc.	Kingsport, TN.	
86,103	TRC Pipeline Services LLC, F/K/A Willbros Engineers (U.S.) LLC, TRC Solutions, Inc.	Tulsa, OK.	
86,106	Tucker Energy Services, Inc., Tucker Energy Services LTD, Trucker Energy Services Holdings, etc.	Tulsa, OK.	
90,045	ENGlobal Government Services, Inc., ENGlobal Corporation, SWDS, LLC and The Rowland Group.	Tulsa, OK.	
90,072	Leam Drilling Systems, LLC	Oklahoma City, OK.	
90,072A	Leam Drilling Systems, LLC	New Iberia, LA.	
90,072B	Leam Drilling Systems, LLC	Dickinson, ND.	
90,072C	Leam Drilling Systems, LLC	Conroe, TX.	
90,072D	Leam Drilling Systems, LLC	Midland, TX.	
90,072E	Leam Drilling Systems, LLC	Morgantown, WV.	
90,088	Rehme Manufacturing, Inc., Express Services, Inc	Marlow, OK.	
90,125	Owens-Brockway Glass Container, Inc., Owens-Brockway Packaging, Inc., Owens-Illinois Group, Inc., etc.	Oakland, CA.	
90,198	Yupana LLC, RSSI Field Services	Walnut Creek, CA.	
90,201	Desmi-Afti, Inc	Orchard Park, NY.	
90,202	Extreme Networks, Inc., Cenepa and Associates, CV Partners, Inc., DeWinter Consulting, etc.	San Jose, CA.	
90,202A	Extreme Networks, Inc., Beacon Hill Staffing Services, Canepa and Associates, Slalom, LLC, etc.	Salem, NH.	
90,204	FTS International Services, LLC, FTS International, Inc	Chickasha, OK.	
90,219	Morgan Advanced Materials and Technology, Inc., Morgan Advanced Materials, Global Seals and Bearings.	Coudersport, PA.	
90,229	Carrier Corporation, North America Truck Trailer Aftermarket Parts Group, etc.	East Syracuse, NY.	
90,283	Equifax, Inc., Datavision Resources LLC—Carlisle Office Division, Aerotek.	Carlisle, IA.	
90,290	Pioneer Wireline Services, Mid-Continent Division, Pioneer Energy Services.	Hays, KS.	
90,309	Visteon Holland Technical Center, Electronics Division, Visteon Corporation, MSX International.	Holland, MI.	
90,337	Wilson Trailer Company	Sioux City, IA.	
91,010	Baker Hughes Incorporated, Pressure Pumping, Kelly Services	Yukon, OK.	
91,010A	Baker Hughes Incorporated, Drilling Services, Kelly Services	Oklahoma City, OK.	
91,049	El Paso Times, Texas/New Mexico Newspapers PSHP, Gannett Company, Inc., RMPersonnel, Inc.	El Paso, TX.	
91,100	CSX Transportation, Inc., CSX Corporation	Corbin, KY.	
91,137	Baker Hughes, Inc., Southern Area—Pressure Pumping Product Line, etc.	San Antonio, TX.	
91,181	Horizon Energy Services LLC	Stillwater, OK.	
91,204	Globo Mobile Technologies Inc., Globo PLC, PEO—ADP TotalSource	Canfield, OH.	
91,310	Malton Electric Company	Virginia, MN.	

TA–W No.	Subject firm	Location	Impact date
91,325	Essar Steel Minnesota LLC, Essar Global Fund Limited, Express Employment Professional, etc.	Hibbing, MN.	
91,380	Gardner Denver Nash, LLC, R&D Engineering Department, The Marine Group, Gardner Denver Inc.	Trumbull, CT.	
91,407	Emerald Coal Resources, LP, Alpha Natural Resources, Inc., Emerald No. 8 Portal, GMS Mine, etc.	Waynesburg, PA.	
91,426	Van Air, Inc	Lake City, PA.	
91,432	The Williams Companies, Inc., Supply Chain—OKC, Williams WPC–I, LLC.	Oklahoma City, OK.	
91,452	EOG Resources, Inc	Oklahoma City, OK.	
91,455	Nitro-Lift Technologies, LLC	Mill Creek, OK.	
91,486	Damper Design, Inc., Monocacyfabs, Inc	Bethlehem, PA.	
91,495	Molycorp Metals and Alloys, Inc	Mountain Pass, CA.	
91,498	Cascade Kelly Holdings LLC, DBA Columbia Pacific Bio-Refinery, Global Operating, LLC, Global GP LLC.	Clatskanie, OR.	
91,504	Atwood Oceanics Management, Inc	Houston, TX.	
91,529	Bimbo Bakeries USA, Inc., Thrift Store	Spencer, IA.	
91,529A	Bimbo Bakeries USA, Inc., Thrift Store	Sioux City, IA.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
90,111	Coastal Closeouts, Inc., West Coast Rags	Vernon, CA.	
90,114	FutureMark Manistique	Manistique, MI.	
90,329	Blount, Inc., Blount International, Inc., Express Employment Professionals.	Portland, OR.	
91,182	Maverick Innovative Solutions, LLC	Ashland, OH.	
91,560	General Cable, General Cable Corporation, Staffmark	Malvern, AR.	

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W No.	Subject firm	Location	Impact date
86,053	Medco/Express Scripts, Quality Assurance Technical Group, Princeton Information.	Franklin Lakes, NJ.	
91,410	Consol Energy, Inc	Canonsburg, PA.	
91,469	Hermitage Wood Products, Inc	Pompano Beach, FL.	
91,488	Montgomery Developmental Center, Department of Developmental Disabilities, State of Ohio.	Huber Heights, OH.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
85,936	Total Safety US, United State Steel Corporation, Fairfield Works-Flat Roll Operations, etc.	Decatur, AL.	
90,110	Boise White Paper, LLC, Boise Inc., Boise Paper Holdings, LLC, Bartlett & Associates.	International Falls, MN.	
91,194	Kelly Services, Baker Hughes Incorporated	Claremore, OK.	
91,297	Magnetation LLC, Plant 4	Grand Rapids, MN.	
91,403	Radiant Systems, Kraft Foods Group Global, Inc	Woburn, MA.	
91,415	HCL America Inc., ERS Division, HCL Technologies Ltd., HCL Bermuda Ltd., etc.	Naperville, IL.	
91,473	U.S. Security Associates Inc., Kraft Foods Group Global, Inc	Woburn, MA.	

TA–W No.	Subject firm	Location	Impact date
91,547	General Electric Company, Transportation Division	Erie, PA.	

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
91,370	Print Media, LLC	Tucker, GA.	
91,490	Sprint	Blountville, TN.	
91,564	Sprint	Temple, TX.	
91,571	Molycorp Mt. Pass	Mountain Pass, CA.	
91,594	Sprint Corporation, Wireless Call Center	Temple, TX.	

I hereby certify that the aforementioned determinations were issued during the period of *March 28, 2016 through April 29, 2016.* These determinations are available on the Department's Web site *https://www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 2nd day of May 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–12094 Filed 5–23–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Funding Opportunity Announcement for YouthBuild Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of funding opportunity announcement.

Funding Opportunity Number: FOA–ETA–16–10.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of approximately $80 million in grant funds authorized by the Workforce Innovation and Opportunity Act (WIOA) (Pub. L.113–128) for YouthBuild.

Under this Funding Opportunity Announcement (FOA), DOL will award grants through a competitive process to organizations to oversee the provision of education, occupational skills training, and employment services to disadvantaged youth while performing meaningful work and service to their communities. DOL hopes to serve approximately 5,250 participants during the grant period of performance, with approximately 80 projects awarded across the country. Individual grants will range from $700,000 to $1.1 million and require an exact 25 percent match from applicants, using sources other than federal funding. The grant period of performance for this FOA is 40 months, including a four-month planning period.

The complete FOA and any subsequent FOA amendments in connection with this funding opportunity are described in further detail on ETA's Web site at *https://www.doleta.gov/grants/find_grants.cfm* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this funding opportunity.

DATES: The closing date for receipt of applications under this announcement is July 6, 2016. Applications must be received no later than 4:00:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Kia Mason, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–2606.

Signed May 17, 2016, in Washington, DC.

Eric D. Luetkenhaus,

Grant Officer, Employment and Training Administration.

[FR Doc. 2016–12084 Filed 5–23–16; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Securities Lending by Employee Benefit Plans, Prohibited Transaction Exemption 2006–16

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Securities Lending by Employee Benefit Plans, Prohibited Transaction Exemption 2006–16," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 23, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201604-1210-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Securities Lending by Employee Benefit Plans, Prohibited Transaction Exemption (PTE) 2006–16, information collection. PTE 2006–16 permits an employee benefit plan to lend securities to certain broker-dealers and banks and to make compensation arrangements for lending services provided by a plan fiduciary in connection with such securities loans. The PTE includes third-party disclosures, specifically financial statements and lending and compensation agreements. Employee Retirement Income Security Act of 1974 section 408(a) authorizes this information collection. *See* 29 U.S.C. 1108(a).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0065.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 23, 2015 (80 FR 72991).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0065. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Securities Lending by Employee Benefit Plans, Prohibited Transaction Exemption 2006–16.

OMB Control Number: 1210–0065.

Affected Public: Private Sector—businesses or other for profits and not-for-profit institutions.

Total Estimated Number of Respondents: 100.

Total Estimated Number of Responses: 1,000.

Total Estimated Annual Time Burden: 192 hours.

Total Estimated Annual Other Costs Burden: $7,200.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: May 18, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–12152 Filed 5–23–16; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Unemployment Insurance Data Validation

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, "Unemployment Insurance Data Validation," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 23, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201512-1205-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Unemployment Insurance (UI) Data Validation (DV) information collection. The UI DV Program requires a State to operate a system for ascertaining the validity (*i.e.,* adherence to Federal reporting requirements) of specified UI data submitted to the ETA on certain monthly or quarterly reports. Some of these data are used to assess performance, including for the Government Performance and Results Act, or to determine States grants for administration of the UI Program. This information collection has been classified as a revision, because of a change to the high dollar overpayment threshold for Reporting Form ETA–227. Social Security Act section 303(a)(6) authorizes this information collection. *See* 42 U.S.C. 503(a)(6).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0431. The current approval is scheduled to expire on May 31, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 23, 2016 (80 FR 64450).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0431. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Unemployment Insurance Data Validation.

OMB Control Number: 1205–0431.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 53.

Total Estimated Annual Time Burden: 23,644 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: May 18, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–12151 Filed 5–23–16; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, June 7, 2016.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The two items are open to the public.

MATTERS TO BE CONSIDERED:

8626A Aircraft Accident Report—Aerodynamic Stall and Loss of Control During Approach, Embraer EMB–500, N100EQ, Gaithersburg, Maryland, December 8, 2014.

8707A Marine Accident Report—Collision between Bulk Carrier *Conti Peridot* and Tanker *Carla Maersk*, Houston Ship Channel near Morgan's Point, Texas, March 9, 2015.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Wednesday, June 1, 2016.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *www.ntsb.gov.*

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov.*

FOR MEDIA INFORMATION CONTACT: Eric Weiss at (202) 314–6100 or by email at *eric.weiss@ntsb.gov* for the Gaithersburg, MD accident and Terry Williams at (202) 314–6100 or by email at *terry.williams@ntsb.gov* for the Morgan's Point, TX accident.

Dated: Thursday, May 19, 2016.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2016–12263 Filed 5–20–16; 11:15 am]

BILLING CODE 7533–01–P

NATIONAL WOMEN'S BUSINESS COUNCIL

Quarterly Public Meeting

AGENCY: National Women's Business Council.

ACTION: Notice of open public meeting.

DATES: The Public Meeting will be held on Thursday, June 30, 2016 from 2:00 p.m. to 4:00 p.m. EST.

ADDRESSES: The meeting will be held virtually via teleconference.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), the U.S. Small Business Administration (SBA) announces the meeting of the National Women's Business Council. The National Women's Business Council conducts research on issues of importance and impact to women entrepreneurs and makes policy recommendations to the SBA, Congress, and the White House on how to improve the business climate for women.

This meeting is the 3rd quarter meeting for Fiscal Year 2016. The program will include remarks from the Council Chair, Carla Harris; updates on research projects in progress, including: Women's participation in corporate supplier diversity programs, women's participation in accelerators and incubators, entrepreneurship amongst black women, and ecosystems; a recap of the Council's recent engagement efforts; and an announcement of the Council's new research portfolio. The Council will also share a new tool—a resource platform for women in pursuit of growth. Time will be reserved at the end for audience participants to address Council Members directly with questions, comments, or feedback. Additional speakers will be promoted upon confirmation.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. To RSVP and confirm attendance, the general public should email *info@nwbc.gov* with subject line—"RSVP for 6/30 Public Meeting". Anyone wishing to make a presentation to the NWBC at this meeting must either email their interest to *info@nwbc.gov* or call the main office number at 202–205–3850.

For more information, please visit the National Women's Business Council Web site at *www.nwbc.gov.*

Dated: May 12, 2016.

Miguel J. L'Heureux,

SBA Committee Management Officer.

[FR Doc. 2016–12103 Filed 5–23–16; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on June 8–10, 2016, 11545 Rockville Pike, Rockville, Maryland.

Wednesday, June 8, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: State-of-the-Art Reactor Consequences Analyses (SOARCA) Project-Sequoyah (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding SOARCA.

10:45 a.m.–12:15 p.m.: Review of Regulatory Guide 1.230, "Regulatory Guidance on the Alternate Pressurized Thermal Shock Rule" and draft NUREG–2163, "Technical Basis for Regulatory Guidance on the Alternate Pressurized Thermal Shock Rule" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the reviews of the subject regulatory documents.

1:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Thursday, June 9, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:35 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. **Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10:30 a.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports discussed during this meeting.

Friday, June 10, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

11:30 a.m.–12:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated at Rockville, Maryland, this 18th day of May, 2016.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2016–12197 Filed 5–23–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–609; NRC–2013–0235]

Medical Radioisotope Production Facility; Northwest Medical Isotopes, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Construction permit application; opportunity to request a hearing and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing notice of an uncontested hearing and an opportunity to request a hearing on the Northwest Medical Isotopes, LLC (NWMI), construction permit application that proposes the construction of a medical radioisotope production facility in Columbia, Missouri. The NRC staff is currently conducting a detailed technical review of the construction permit application. If the NRC issues a construction permit, the applicant, NWMI, would be authorized to construct its proposed production facility in accordance with the provisions of the construction permit. The application contains sensitive unclassified non-safeguards information (SUNSI).

DATES: A request for a hearing must be filed by July 25, 2016. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by June 3, 2016.

ADDRESSES: Please refer to Docket ID NRC–2013–0235 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0235. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Michael Balazik, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2856, email: *Michael.Balazik@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letters dated February 5, 2015 (ADAMS Accession No. ML15086A261), and July 20, 2015 (ADAMS Accession No. ML15210A182), NWMI submitted a construction permit application that proposed to construct a medical radioisotope production facility. The notice accepting part one of the application for docketing was published on June 8, 2015 (80 FR 32418). The notice accepting the second and final portion of NWMI's two-part construction permit application for docketing was published on January 4, 2016 (81 FR 101). The docket number established for this application is 50–609.

The NRC is considering issuance of a construction permit to NWMI that would authorize construction of the NWMI proposed production facility as defined by 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," to be located in Columbia, Missouri.

II. Uncontested Hearing

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and 10 CFR parts 2 and 50, "Agency Rules of Practice and Procedure" and "Domestic Licensing of Production and Utilization Facilities," respectively, notice is hereby given that an uncontested (*i.e.,* mandatory) hearing will be held at a time and place to be set in the future by the Commission.

The uncontested hearing on the application for a construction permit filed by NWMI pursuant to 10 CFR part 50 will be conducted by the Commission. The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report. The Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 50.58, "Hearings and Report of the Advisory Committee on Reactor Safeguards," and the ACRS will report on those portions of the application that concern safety. The NRC staff will also complete an environmental review of the application and will document its findings in an environmental impact statement in accordance with the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition for leave to intervene with respect to issuance of the construction permit application. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure," in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the construction permit application under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by July 25, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by July 25, 2016.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

V. Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Northwest Medical Isotopes, LLC, Docket No. 50–609, Columbia, Missouri

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is provided access to that information. However, if more than 25 days remain between the dates the petitioner is provided access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

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[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) an officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 18th day of May, 2016.

For the Nuclear Regulatory Commission.

Rochelle C. Bavol,

Acting, Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2016–12195 Filed 5–23–16; 8:45 am]

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[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

NUCLEAR REGULATORY COMMISSION

[EA–15–039; NRC–2016–0104]

In the Matter of Entergy Nuclear Operations, Inc., Palisades Nuclear Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a Confirmatory Order to Entergy Nuclear Operations, Inc. (Entergy), confirming agreements reached in an Alternative Dispute Resolution Session held on March 25, 2016. As part of the agreement, Entergy will take a number of actions, including: (1) Developing a case study pertaining to the leakage of the Safety Injection Refueling Water Tank at the Palisades Nuclear Plant and training site personnel with an emphasis on lessons learned from the event; (2) sharing facts and lessons learned with the Entergy Fleet and other reactor licensees; (3) reviewing and revising the Entergy corrective action and operability determination procedures to ensure indeterminate and/or changing conditions are addressed, and (4) modifying the current outreach program at Palisades to include wide audience and discussions of the event, plant safety, and current operations.

DATES: *Effective Date:* June 16, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0104 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0104. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Magdalena Gryglak, Region III, U.S. Nuclear Regulatory Commission, Lisle, Illinois, 60532; telephone: 630–810–4372, email: *Magdalena.Gryglak@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Lisle, Illinois this 16 day of May, 2016.

For the Nuclear Regulatory Commission.

Cynthia D. Pederson,

Regional Administrator.

Attachment—Confirmatory Order Modifying License

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

In the Matter of
ALL POWER REACTOR LICENSEES OWNED AND OPERATED BY
ENTERGY NUCLEAR OPERATIONS, INC.; ENTERGY OPERATIONS, INC.; AND ENTERGY NUCLEAR GENERATION COMPANY
EA–15–039
Docket Nos. (Attachment 1)
Licensed Nos. (Attachment 1)

CONFIRMATORY ORDER MODIFYING LICENSE

I

Entergy Nuclear Operations, Inc. (Entergy) is the holder of Reactor Operating License No. DPR–20 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50 on March 24, 1971, and renewed on January 17, 2007. The license authorizes the operation of the Palisades Nuclear Plant (Palisades) in accordance with conditions specified therein. The facility is located on Entergy's site in Covert, Michigan.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on March 25, 2016.

II

On June 25, 2012, the NRC Office of Investigations (OI), Region III Field Office initiated an investigation (OI Case No. 3–2012–021) to determine whether personnel at Palisades deliberately failed to provide complete and accurate information to the NRC regarding a potential leak in the Safety Injection Refueling Water Tank (SIRWT), thereby violating 10 CFR 50.9, "Completeness and Accuracy of Information." The Office of Investigations completed its investigation on March 10, 2015, and the NRC provided a factual summary of the investigation in a letter to Entergy dated February 22, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16053A472). Based on the review of the OI investigation report, the NRC determined that four Palisades employees willfully violated 10 CFR part 50, Appendix B, Criterion V, "Instructions, Procedures, and Drawings," by failing to comply with the Palisades corrective action program procedure. The NRC also determined that Entergy violated 10 CFR part 50, Appendix B, Criterion V, "Instructions, Procedures, and Drawings," based on an inadequate operability determination. In addition, the NRC found that Entergy violated Technical Specifications (TS), Surveillance Requirement (SR) 3.0.3 by not performing either a missed surveillance test within 24 hours from identification or a risk evaluation to complete the surveillance at a later time.

More specifically, on May 18, 2011, Palisades employees initiated Condition Report (CR) PLP–2011–02491 when leakage from the ceiling in the Palisades main control room was identified following heavy rains in the area. Based on the evidence gathered during the OI investigation, the NRC determined that four Palisades employees willfully violated NRC requirements by failing to enter a condition adverse to quality into Palisades' corrective action program, after they either initiated or received emails that concluded with high certainty that the SIRWT or associated piping was the source of the leakage. Their actions caused Entergy to be in violation of 10 CFR part 50, Appendix B, Criterion V, "Instructions, Procedures, and Drawings," and Procedure EN–LI–102, "Corrective Action Process," Revision 16, which requires employees to promptly identify and initiate CRs for conditions adverse to quality.

On June 2, 2011, Entergy performed a direct visual inspection of the catacombs, an area directly above the control room and below the SIRWT, to look for sources of leakage. As a result of the inspection, Palisades identified an active flange leak on a 3-inch SIRWT piping flange (CR PLP–2011–02738) and an active leak from the catacombs ceiling (CR PLP–2011–02740). The NRC determined that Entergy violated NRC requirements by failing to perform an operability determination for the catacombs ceiling leak. Additionally, Entergy failed to perform an engineering evaluation for the SIRWT when Palisades staff identified active boric acid leakage from a safety injection flange with carbon steel bolts. These failures caused Entergy to be in violation of 10 CFR part 50, Appendix B, Criterion V, "Instructions, Procedures, and Drawings," and Procedure EN–OP–104, "Operability Determination Process," Revision 5, which required Entergy to assess operability when degraded conditions affecting structures, systems, and components, were identified.

The NRC also determined Entergy to be in violation of Palisades TS, SR 3.0.3, which required it to either perform a missed surveillance test within 24 hours or a risk evaluation for any surveillance delayed greater than 24 hours. Specifically, when Entergy identified surveillance procedure RT–71M, the surveillance to conduct the American Society of Mechanical Engineers inservice pressure test of the SIRWT and associated piping, had not been performed within its required schedule, Entergy failed to perform the test within 24 hours from identification or perform a risk evaluation to complete the surveillance at a later time.

Entergy accepted the NRC's offer of ADR to resolve differences it had with the NRC over the results of the investigation and these apparent violations. Alternative Dispute Resolution is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. On March 25, 2016, Entergy and the NRC met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution.

Prior to the NRC's offer to engage in ADR, Entergy had already taken several corrective actions, including (but not limited to): (1) repair of the SIRWT; (2) waterproofing the concrete support structure below the SIRWT nozzles; (3) changes to management and other personnel at the station; (4) addressing safety culture by training site personnel, increasing leadership communication of safety culture expectations, and completing an independent third party assessment of safety culture; and (5) implementing a Recovery Plan at Palisades to strengthen safety culture, the corrective action program, and leadership effectiveness.

III

During the ADR session, the NRC and Entergy reached a preliminary settlement agreement. The NRC is issuing this Confirmatory Order pursuant to the agreement reached during the ADR process. The elements of the agreement, as signed by both parties, consist of the following:

1. Entergy does not believe that any of the above violations were committed willfully, but rather were the product of deficiencies in the organizational safety culture that existed at the time those violations occurred. The parties agreed to disagree on the issue of willfulness.

2. Entergy will ensure site personnel understand lessons learned from this matter:

2a. Within 180 days of the effective date of the Confirmatory Order, Entergy will develop a case study with the participation of key personnel in operations, chemistry, radiation protection, and engineering, addressing lessons learned from the events that gave rise to the Confirmatory Order. The case study will include applicable safety culture traits, including the importance of conservative decisionmaking; going forward in the face of uncertainty; the need for nuclear personnel to demonstrate a questioning attitude; and the threshold for initiating corrective action documents, especially when dealing with indeterminate and/or changing conditions.

2b. Within 180 days of the completion of item 2a., Entergy will present the case study to the Palisades site leadership team (first-line supervisors and above) during focused leadership training; licensed and non-licensed operators during routine requalification training; engineering personnel during routine Engineering Support Personnel training; and chemistry, radiation protection, and maintenance personnel during continuing training. This training will include long-term contractor personnel who would normally attend.

2c. No later than December 31, 2017, the Entergy Safety Review Committee, Oversight Subcommittee, will report to the Entergy Chief Nuclear Officer on the effectiveness of the training in item 2b. Upon completion of the report, Entergy will notify in writing the Director, Division of Reactor Projects, NRC Region III, and make the report available to the NRC for inspection.

3. Entergy will share lessons learned from this matter with other reactor licensees:

3a. Within 180 days of completion of item 2a., Entergy will present the lessons learned from the case study to the Entergy fleet in *Inside Entergy*.

3b. Within 360 days of completion of item 2a., Entergy will present the lessons learned from the case study at: (1) A Regional Utility Group meeting in each of the NRC Regions that Entergy operates; and (2) a suitable industry-wide forum such as the Nuclear Energy Institute Licensing Forum.

3c. Entergy will notify in writing the Director, Division of Reactor Projects, NRC Region III, at least 30 days prior to any scheduled presentation under item 3b, and make the presentation materials available for NRC review.

3d. No later than December 31, 2017, Entergy will affirm in writing to the Director, Division of Reactor Projects, NRC Region III, that the presentations in items 3a. and 3b. were conducted.

4. Within 360 days of the effective date of the Confirmatory Order, Entergy will review Procedure EN–OP–104, "Operability Determination Process," and Procedure EN–LI–102, "Corrective Action Process," in light of the lessons learned from events associated with leakage of the SIRWT and revise these procedures as appropriate. In particular, the review will evaluate the adequacy of those procedures to address indeterminate and/or changing conditions. Upon completion of the procedure reviews and applicable revisions, Entergy will notify in writing the Director, Division of Reactor Projects, NRC Region III, and make the procedures available to the NRC for inspection.

5. Entergy will modify its current program of public outreach at Palisades. The modifications will include, at a minimum:

5a. Ensuring key stakeholders, including Federal, State, and local government officials, non-government organizations interested in Palisades, and members of the local community, are invited to the meetings.

5b. Ensuring the subject of each meeting includes plant safety and operations.

5c. Ensuring the format of the meeting permits the audience to raise questions, such as in a town hall environment.

5d. Ensuring at least one meeting is held no later than December 31, 2016, which will address the events that led to this Confirmatory Order.

5e. Ensuring at least two meetings are held per calendar year in 2017 and 2018.

In exchange for Entergy fulfilling its commitments under this Confirmatory Order, and for the corrective actions Entergy has already taken, the NRC agreed to the following conditions:

1. The NRC will consider this Confirmatory Order as an escalated enforcement action for a period of one year from its effective date.

2. The NRC will refrain from issuing a Notice of Violation and proposing a civil penalty for the apparent violations described in the NRC letter to Entergy dated February 22, 2016.

On May 5, 2016, Entergy consented to issuing this Confirmatory Order with the commitments described in Section V. Entergy further agreed that this Confirmatory Order is to be effective 30 calendar days after issuance and waived its right to a hearing on the Confirmatory Order.

IV

Since the Entergy agrees to take additional actions to address NRC concerns, as set forth in Section III above, the NRC concludes that its concerns can be resolved through issuance of this Confirmatory Order.

I find that Entergy's commitments set forth in Section V are acceptable and necessary, and I conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Entergy's commitments be confirmed by this Confirmatory Order. Based on the above and based on Entergy's consent, this Confirmatory Order is effective 30 calendar days after issuance.

V

Accordingly, pursuant to Sections 104b, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR part 50, IT IS HEREBY ORDERED THAT:

1. Entergy will ensure site personnel understand lessons learned from this matter:

1a. Within 180 days of the effective date of the Confirmatory Order, Entergy will develop a case study with the participation of key personnel in operations, chemistry, radiation protection, and engineering, addressing lessons learned from the events that gave rise to the Confirmatory Order. The case study will include applicable safety culture traits, including the importance of conservative decisionmaking; going forward in the face of uncertainty; the need for nuclear personnel to demonstrate a questioning attitude; and the threshold for initiating corrective action documents, especially when dealing with indeterminate and/or changing conditions.

1b. Within 180 days of the completion of item 1a., Entergy will present the case study to the Palisades site leadership team (first-line supervisors and above) during focused leadership training; licensed and non-licensed operators during routine requalification training; engineering personnel during routine Engineering Support Personnel training; and chemistry, radiation protection, and maintenance personnel during continuing training. This training will include long-term contractor personnel who would normally attend.

1c. No later than December 31, 2017, the Entergy Safety Review Committee, Oversight Subcommittee, will report to the Entergy Chief Nuclear Officer on the effectiveness of the training in item 1b. Upon completion of the report, Entergy will notify in writing the Director, Division of Reactor Projects, NRC Region III, and make the report available to the NRC for inspection.

2. Entergy will share lessons learned from this matter with other reactor licensees:

2a. Within 180 days of completion of item 1a., Entergy will present the lessons learned from the case study to the Entergy fleet in *Inside Entergy*.

2b. Within 360 days of completion of item 1a., Entergy will present the lessons learned from the case study at: (1) A Regional Utility Group meeting in each of the NRC Regions that Entergy operates; and (2) a suitable industry-wide forum such as the Nuclear Energy Institute Licensing Forum.

2c. Entergy will notify in writing the Director, Division of Reactor Projects, NRC Region III, at least 30 days prior to any scheduled presentation under item 2b. and make the presentation materials available for NRC review.

2d. No later than December 31, 2017, Entergy will affirm in writing to the Director, Division of Reactor Projects, NRC Region III, that the presentations in items 2a. and 2b. were conducted.

3. Within 360 days of the effective date of the Confirmatory Order, Entergy will review Procedure EN–OP–104, "Operability Determination Process," and Procedure EN–LI–102, "Corrective Action Process," in light of the lessons learned from events associated with leakage of the SIRWT and revise these procedures as appropriate. In particular, the review will evaluate the adequacy of those procedures to address indeterminate and/or changing conditions. Upon completion of the procedure reviews and applicable revisions, Entergy will notify in writing the Director, Division of Reactor Projects, NRC Region III, and make the procedures available to the NRC for inspection.

4. Entergy will modify its current program of public outreach at Palisades. The modifications will include, at a minimum:

4a. Ensuring key stakeholders, including Federal, State, and local government officials, non-government organizations interested in Palisades, and members of the local community are invited to the meetings.

4b. Ensuring the subject of each meeting includes plant safety and operations.

4c. Ensuring the format of the meetings permits the audience to raise questions, such as in a town hall environment.

4d. Ensuring at least one meeting is held no later than December 31, 2016, which will address the events that led to this Confirmatory Order.

4e. Ensuring at least two meetings are held per calendar year in 2017 and 2018.

5. The conditions of this order are binding upon the successors and assigns of Entergy.

The Regional Administrator, Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Entergy may request a hearing within 30 days of the issuance date of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007), as amended by 77 FR 46562; August 3, 2012 (codified in pertinent part at 10 CFR part 2, subpart C). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8:00 a.m. and 8:00 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted a request for exemption from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue a separate Order designating the time and place of any hearings, as appropriate. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days after issuance of the Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

Dated at Lisle, Illinois this 16 day of May, 2016.

For the Nuclear Regulatory Commission.

Cynthia D. Pederson,

Regional Administrator.

ALL POWER REACTOR LICENSEES OWNED AND OPERATED BY ENTERGY NUCLEAR OPERATIONS, INC.; ENTERGY OPERATIONS, INC.; AND ENTERGY NUCLEAR GENERATION COMPANY

Arkansas Nuclear One. Units 1 and 2
Entergy Operations, Inc.
Docket Nos. 50–313, 50–368
License Nos. DRP–51; NPF–6

Mr. Jeremy Browning, Site Vice President
Arkansas Nuclear One Entergy Operations, Inc.
1448 SR 333
Russellville, AR 72802–0967

Grand Gulf Nuclear Station
Entergy Operations, Inc.
Docket No. 50–416
License No. NPF–29

Mr. Kevin Mulligan, Site Vice President
Entergy Operations, Inc.
Grand Gulf Nuclear Station
P.O. Box 756
Port Gibson, MS 39150

Indian Point Nuclear Generating, Units 2 and 3
Entergy Nuclear Operations, Inc.
Docket Nos. 50–247 and 50–286
License Nos. DPR–26 and DPR–64

Mr. Larry Coyle, Site Vice President
Entergy Nuclear Operations, Inc.
Indian Point Energy Center
450 Broadway, GSB
Buchanan, NY 10511–0249

James A FitzPatrick Nuclear Power Plant
Entergy Nuclear Operations, Inc.
Docket No. 50–333
License No. DPR–59

Mr. Brian Sullivan, Site Vice President
Entergy Nuclear Operations, Inc.
James A FitzPatrick Nuclear Power Plant
P.O. Box 110
Lycoming, NY 13093

Palisades Nuclear Plant
Entergy Nuclear Operations, Inc.
Docket No. 50–255
License No. DPR–20

Mr. Anthony Vitale, Vice President, Operations
Entergy Nuclear Operations, Inc.
Palisades Nuclear Plant
27780 Blue Star Memorial Highway
Covert, MI 49043

Pilgrim Nuclear Power Station
Entergy Nuclear Generation Company
Docket No. 50–293
License No. DPR–35

Mr. John Dent, Site Vice President
Entergy Nuclear Operations Inc.
Pilgrim Nuclear Power Station
600 Rocky Hill Road
Plymouth, MA 02360–5508

River Bend Station
Entergy Operations, Inc.
Docket No. 50–458
License No. NPF–47

Mr. Eric W. Olson, Site Vice President
Entergy Operations, Inc.
River Bend Station
5485 US Highway 61 N
St. Francisville, LA 70775

Vermont Yankee Nuclear Power Station
Entergy Nuclear Operations, Inc.
Docket No. 50–271
License No. DPR–28

Mr. Christopher Wamser, Site Vice President
Entergy Nuclear Operations, Inc.
Vermont Yankee Nuclear Power Station
P. O. Box 250
Vernon, VT 05354

Waterford Steam Electric Station. Unit 3
Entergy Operations, Inc.
Docket No. 50–382
License No. NPF–38

Mr. Michael R. Chisum, Site Vice President
Entergy Operations, Inc.
Waterford Steam Electric Station
17265 River Road
Killona, LA 70057–0751

[FR Doc. 2016–12193 Filed 5–23–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0100]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 26, 2016, to May 9, 2016. The last biweekly notice was published on May 10, 2016 (81 FR 28891).

DATES: Comments must be filed by June 23, 2016. A request for a hearing must be filed by July 25, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0100. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and

Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mable Henderson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–3760, email: *Mable.Henderson@nrc.gov.*

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0100 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0100.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0100, facility name, unit number(s), application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by July 25, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by July 25, 2016.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (PVNGS), Maricopa County, Arizona

Date of amendment request: April 1, 2016. A publicly-available version is in ADAMS under Accession No. ML16096A337.

Description of amendment request: The amendments would revise the technical specifications (TSs) for PVNGS, by modifying the requirements regarding the degraded and loss of voltage relays that are planned to be modified to be more aligned with designs generally implemented in the industry. Specifically, the licensing basis for degraded voltage protection will be changed from reliance on a TS initial condition that ensures adequate post-trip voltage support of accident mitigation equipment to crediting automatic actuation of the degraded and loss of voltage relays to ensure proper equipment performance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would revise the allowable values of the Palo Verde Nuclear Generating Station (PVNGS) Engineered Safety Features Actuation System (ESFAS) Class 1E 4.16 [kiloVolt (kV)] bus degraded voltage and loss of voltage relays. Specifically, the proposed change includes a two stage time delay for the degraded voltage relays and a fixed time delay for the loss of voltage relays with corresponding voltage settings. The proposed change is supported by design calculations and analyses to ensure that the Class 1E buses will be isolated from the normal off-site power source at the appropriate voltage level and time delay under either accident or non-accident sustained degraded voltage conditions. The normally operating safety-related motors will continue to operate without sustaining damage or tripping during the worst-case, accident (*i.e.,* safety injection actuation signal, SIAS) or non-accident degraded voltage condition for the maximum possible time-delay. Thus, the safety-related loads will be available to perform their safety function if a loss-of coolant accident (LOCA) coincident with a loss-of-offsite power (LOOP) occurs following a degraded voltage condition.

The proposed change implements a new design for a reduced (short stage) time delay to isolate safety buses from offsite power if a LOCA were to occur coincident with a sustained degraded voltage condition. This ensures that emergency core cooling system pumps inject water into the reactor vessel within the time assumed and evaluated in the accident analysis, consistent with current NRC requirements and 10 CFR part 50, Appendix A, General Design Criterion 17, *Electric Power Systems.*

The proposed changes do not adversely affect accident initiators or precursors. The diesel generator start, due to a LOCA signal, and loading sequence are not affected by this change. During an actual loss of voltage or degraded voltage condition, the loss of voltage and/or degraded voltage time delay will isolate the Class 1E 4.16 kV distribution system from offsite power before the diesel is ready to assume the emergency loads, which is the limiting time basis for mitigating system responses to the accident. For this reason, the existing LOCA with coincident LOOP analysis continues to be valid.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of

accident from any accident previously evaluated?

Response: No.

The proposed change would revise the allowable values of the PVNGS ESFAS Class 1E 4.16 kV bus degraded voltage and loss of voltage relays. Specifically, the proposed change includes a two stage time delay for the degraded voltage relays and a fixed time delay for the loss of voltage relays with corresponding voltage settings.

The proposed change does not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. While the proposed change does install new relays, with new settings and time delays, the relays are not new to the industry and are not being operated in a unique or different manner. No new effects on existing equipment are created nor are any new malfunctions introduced.

The accidents and events previously analyzed remain bounding. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change would revise the allowable values of the PVNGS ESFAS Class 1E 4.16 kV bus degraded voltage and loss of voltage relays. Specifically, the proposed change includes a two stage time delay for the degraded voltage relays and a fixed time delay for the loss of voltage relays with corresponding voltage settings. The proposed change implements a new design for a reduced time delay to isolate safety buses from offsite power if a LOCA were to occur coincident with a sustained degraded voltage condition. This ensures that emergency core cooling system pumps inject water into the reactor vessel within the time assumed and evaluated in the accident analysis, consistent with current NRC requirements and 10 CFR part 50, Appendix A, General Design Criterion 17, *Electric Power Systems*. The proposed TS change to the maximum and minimum allowable voltages for the Class 1E 4.16 kV buses will allow all safety loads to have sufficient voltage to perform their intended safety functions while ensuring spurious trips are avoided. Thus, the results of the accident analyses will not be affected as the input assumptions are protected.

The diesel generator start, due to a LOCA signal, is not affected by this change. During an actual loss of voltage or degraded voltage condition, the loss of voltage and/or degraded voltage relay voltage settings and time delays will continue to isolate the Class 1E 4.16 kV distribution system from offsite power before the emergency diesel generator is ready to assume the emergency loads. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, AZ 85072–2034.

NRC Branch Chief: Robert J. Pascarelli.

Dominion Nuclear Connecticut, Inc. (DNC), Docket No. 50–336, Millstone Power Station, Unit No. 2 (MPS2), New London County, Connecticut

Date of amendment request: January 25, 2016. A publicly available version is in ADAMS under Accession No. ML16029A168.

Description of amendment request: The amendment would revise MPS2 Technical Specification (TS) 3.5.2, "Emergency Core Cooling Systems, ECCS Subsystems—$T_{avg} > 300$ °F," to remove the charging system and eliminate Surveillance Requirement 4.5.2.e from the TSs. The proposed amendment would also revise MPS2 Final Safety Analysis Report (FSAR) Chapter 14, Section 14.6.1, "Inadvertent Opening of a Pressurized Water Reactor Pressurizer Pressure Relief Valve," to reflect the results of a new long-term analysis for the Inadvertent Opening of Pressurizer Pressure Relief Valve (IOPPRV) event that does not credit charging flow. The proposed amendment would also revise MPS2 FSAR, Section 14.0.11, to clarify the existing discussion regarding the application of single failure criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC staff revisions provided in [brackets]:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The FSAR Chapter 14 accident analyses for MPS2 do not take credit for the flow delivered by the charging pumps. Additionally, the proposed change does not modify any plant equipment or method of operation for any [structures, systems, and components] SSC[s] required for safe operation of the facility or mitigation of accidents assumed in the facility safety analyses.

Therefore, the proposed amendment will not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed amendment does not modify any plant equipment or method of operation for any SSC required for safe operation of the facility or mitigation of accidents assumed in the facility safety analyses. As such, no new failure modes are introduced by the proposed change. Consequently, the proposed amendment does not introduce any accident initiators or malfunctions that would cause a new or different kind of accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not involve a significant reduction in a margin of safety since the proposed changes do not affect equipment design or operation, and no changes are being made to the TS-required safety limits or safety system settings. The proposed changes involve a new safety analysis for the long-term event response for FSAR Chapter 14.6.1, "Inadvertent Opening of a Pressurized Water Reactor Pressurizer Pressure Relief Valve." The analysis demonstrates that flow from two [high pressure safety injection] HPSI pumps, with no credit for the charging pumps, is sufficient to prevent long-term core uncovery, and thus there is no challenge to the specified acceptable fuel design limits. By meeting the MPS2 FSAR Chapter 14 acceptance criteria for a moderate frequency event, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Travis L. Tate.

Dominion Nuclear Connecticut, Inc. (DNC), Docket No. 50–336, Millstone Power Station, Unit No. 2 (MPS2), New London County, Connecticut

Date of amendment request: January 26, 2016. A publicly-available version is in ADAMS under Accession No. ML16034A358.

Description of amendment request: The amendment would revise Section 9.5 of the Final Safety Analysis Report (FSAR) to allow fuel movement to start 100 hours after reactor subcriticality and proceed at an average rate of six assemblies per hour provided the Reactor Building Closed Cooling Water (RBCCW) temperature to the spent fuel pool cooling and shutdown cooling heat exchangers is maintained at less than or equal to 75 °F. If 75 °F cooling water is not achievable, fuel movement at an average rate of six fuel assemblies per hour could be permitted at 150 hours after subcriticality and then only with RBCCW temperatures less than or equal to 85°F. The proposed changes to FSAR Section 9.5 would also address some typographical errors. Technical Specification Bases Section 3/4.9.3 would also be revised to remove reference to the MPS2 spent fuel pool (SFP) heat load analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC staff revisions provided in [brackets]:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment affects some assumptions in the MPS2 FSAR related to the performance of the SFP cooling system and cooling of the fuel in the refueling pool. However, the existing design limits for the SFP remain unchanged. Reducing the decay time from 150 hours to 100 hours prior to allowing fuel movement at an increased average rate of six fuel assemblies per hour does not adversely affect SFP design or operation, provided proposed RBCCW temperature limits are satisfied. The proposed amendment does not change the design or function of the SFP cooling system and is consistent with that previously approved by the NRC under License Amendment 240.

The proposed amendment does not affect the temperature limits of the SFP. The thermal-hydraulic analyses supporting the amendment show that the SFP temperature limits continue to be met with increased heat loads due to reduced time to fuel movement and a higher rate of fuel movement. SFP heat load is not an initiator of any accident discussed in Chapter 14 of the MPS2 FSAR. The proposed amendment does not affect the capability of plant structures, systems, or components (SCCs) to perform their design function and does not increase the probability of a malfunction of any SSC.

The MPS2 FSAR Chapter 14 accident analyses, including the FHA [fuel handling accident] presented in FSAR Section 14.7.4, are not affected by the proposed amendment. The proposed amendment does not increase the probability of a FHA, change the assumptions in the FHA, or affect the conclusions of the current FHA analysis of record. The current FHA analysis of record assumes a minimum 100-hour decay time, which is consistent with the minimum allowable decay time assumed in the thermal-hydraulic analyses that support this amendment. The dose results of the FHA analysis are unchanged, and remain within applicable regulatory limits.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed amendment would revise the minimum allowed start time to begin fuel movement from 150 hours to 100 hours after reactor subcriticality and increase the maximum allowable rate of fuel assembly movement from an average of four assemblies per hour to an average of six assemblies per hour. The revised decay time limit and fuel offload rates do not create the possibility of a new type of accident because the methods for moving fuel and the operation of equipment used for moving fuel are not changed. The proposed amendment does not add or modify any plant equipment. The design and testing of systems designed to maintain the SFP temperature within established limits are not affected by the proposed change. The proposed amendment does not create any credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing basis.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The FHA analysis of record already accounts for irradiated fuel with at least 100 hours of decay. This approved analysis has shown that the projected doses will remain within applicable regulatory limits. Therefore, the proposed amendment does not reduce the margin of safety of the currently approved FHA analysis of record.

The SFP heat load analyses submitted demonstrate that the impact of reduced decay time on SFP decay heat load is offset by the reduced cooling water temperatures such that the maximum normally allowed pool temperature is not exceeded. The slight 1.6 °F increase in SFP temperature for full core off-load as a normal event (for 100 hour hold time with 75 °F RBCCW temperature) is not a significant change and remains below the maximum normally allowed SFP temperature of 150 °F. The peak temperature of the SFP during a loss of cooling event is unaffected and the peak temperature of the fuel cladding, or along the fuel, remains within acceptable limits. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Travis L. Tate.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: March 3, 2016. A publicly-available version is in ADAMS under Accession No. ML16067A390.

Description of amendment request: The amendment would revise the Technical Specification Surveillance Requirements for heaters in the Standby Gas Treatment (SGT) and Control Room Emergency Filtration (CREF) ventilation systems. The proposed amendment is consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–522, Revision 0, "Revise Ventilation System Surveillance Requirements to Operate for 10 hours per Month," as published in the **Federal Register** on September 20, 2012 (77 FR 58421), with variations due to plant-specific nomenclature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces an existing Surveillance Requiremen[t] to operate the SGT System and CREF System equipped with electric heaters for a continuous 10 hour period every 31 days with a requirement to operate the systems for 15 continuous minutes with heaters operating.

These systems are not accident initiators and therefore, these changes do not involve a significant increase in the probability of an accident. The proposed system and filter testing changes are consistent with current regulatory guidance for these systems and will continue to assure that these systems perform their design function which may include mitigating accidents. Thus the change does not involve a significant increase in the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change replaces an existing Surveillance Requiremen[t] to operate the SGT System and CREF System equipped with electric heaters for a continuous 10 hour period every 31 days with a requirement to operate the systems for 15 continuous minutes with heaters operating.

The change proposed for these ventilation systems does not change any system operations or maintenance activities. Testing requirements will be revised and will continue to demonstrate that the Limiting Conditions for Operation are met and the system components are capable of performing their intended safety functions. The change does not create new failure modes or mechanisms and no new accident precursors are generated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change replaces an existing Surveillance Requiremen[t] to operate the SGT System and CREF System equipped with electric heaters for a continuous 10 hour period every 31 days with a requirement to operate the systems for 15 continuous minutes with heaters operating.

The design basis for the ventilation systems' heaters is to heat the incoming air which reduces the relative humidity. The heater testing change proposed will continue to demonstrate that the heaters are capable of heating the air and will perform their design function. The proposed change is consistent with regulatory guidance.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: February 4, 2016. A publicly-available version is in ADAMS under Accession No. ML16035A227.

Description of amendments request: The amendments would revise the Calvert Cliffs technical specifications (TSs) to correct an administrative error in the License Amendment Request (LAR) submitted in accordance with Technical Specification Task Force Traveler 523, "Generic Letter 2008–01, Managing Gas Accumulation." The proposed change would add Surveillance Requirement (SR) 3.5.2.10 to the list of applicable Surveillances of SR 3.5.3.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed LAR is purely an administrative change; therefore, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the TS for which SR 3.5.2.10 is applicable, continue to be operable and capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed LAR is purely an administrative change. The proposed change to add SR 3.5.2.10 to the list of applicable surveillances in SR 3.5.3.1 does not create a new or different kind of accident previously evaluated.

The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the change does not impose any new or different requirements. The change does not alter assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed LAR is purely an administrative change to add SR 3.5.2.10 to the list of applicable surveillances in SR 3.5.3.1.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the Final Safety Analysis Report and Bases to TS). Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Travis L. Tate.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: February 25, 2016. A publicly-available version is in ADAMS under Accession No. ML16060A223.

Description of amendments request: The amendments would revise the Calvert Cliffs technical specifications (TSs) to permit the use of Risk-Informed Completion Times in accordance with TSTF–505, Revision 1, "Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4b." The availability of this TS improvement was announced in the **Federal Register** on March 15, 2012 (77 FR 15399).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes permit the extension of Completion Times provided the associated risk is assessed and managed in accordance with the NRC approved Risk-Informed Completion Time Program. The proposed changes do not involve a significant increase in the probability of an accident previously evaluated because the changes involve no change to the plant or its modes of operation. The proposed changes do not increase the consequences of an accident because the design-basis mitigation function of the affected systems is not changed and the consequences of an accident during the extended Completion Time are no different from those during the existing Completion Time.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed changes do not change the design, configuration, or method of operation of the plant. The proposed changes do not involve a physical alteration of the plant (no new or different kind of equipment will be installed).

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes permit the extension of Completion Times provided that risk is assessed and managed in accordance with the NRC approved Risk-Informed Completion Time Program. The proposed changes implement a risk-informed configuration management program to assure that adequate margins of safety are maintained. Application of these new specifications and the configuration management program considers cumulative effects of multiple systems or components being out of service and does so more effectively than the current TS.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Travis L. Tate.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: March 29, 2016. A publicly-available version is in ADAMS under Package Accession No. ML16090A286.

Description of amendment request: The amendments would revise the Technical Specification (TS) requirements for snubbers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will revise TS 4.7.4 to conform the TS to the revised Snubber Program. Snubber examination, testing, and service life monitoring will continue to meet the requirements of 10 CFR 50.55a(g). Snubber examination, testing, and service life monitoring are not initiators of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. Snubbers will continue to be demonstrated OPERABLE by performance of a program for examination, testing, and service life monitoring in compliance with 10 CFR 50.55a or authorized alternatives. The proposed changes do not adversely affect plant operations, design functions, or analyses that verify the capability of systems, structures, and components to perform their design functions. Therefore, the consequences of accidents previously evaluated are not significantly increased.

Based on the above, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve any physical alteration of plant equipment. The proposed changes do not alter the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

Therefore, it is concluded that these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes ensure snubber examination, testing, and service life monitoring will continue to meet the requirements of 10 CFR 50.55a(g). Snubbers will continue to be demonstrated OPERABLE by performance of a program for examination, testing, and service life monitoring in compliance with 10 CFR 50.55a or authorized alternatives.

Therefore, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Douglas A. Broaddus.

Nebraska Public Power District (NPPD), Docket No. 50–298, Cooper Nuclear Station (CNS), Nemaha County, Nebraska

Date of amendment request: March 22, 2016. A publicly-available version is in ADAMS under Accession No. ML16110A425.

Description of amendment request: The amendment would modify the CNS technical specifications (TSs) by relocating specific surveillance frequencies to a licensee-controlled program consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF [Risk-Informed Technical Specifications Task Force] Initiative 5b," dated March 18, 2009 (ADAMS Accession No. ML090850642). The availability of this TS improvement program was announced in the **Federal Register** on July 6, 2009 (74 FR 31996). The NPPD has proposed certain plant-specific variations and deviations from TSTF–425, Revision 3, as described in its application dated March 22, 2016.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, with NRC staff revisions provided in [brackets], which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new SFCP [Surveillance Frequency Control Program]. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the change does not impose any new or different requirements. The change does not alter assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for structures, systems, components, specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, NPPD will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI [Nuclear Energy Institute] 04–10, Revision 1, in accordance with the TS SFCP. NEI 04–10, Revision 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: Meena K. Khanna.

NextEra Energy Seabrook LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 27, 2016. A publicly-available version is in ADAMS under Accession No. ML16068A130.

Description of amendment request: The amendment would revise the emergency plan for Seabrook Station, Unit No. 1 (Seabrook), to adopt the emergency action level scheme pursuant to Nuclear Energy Institute (NEI) 99–01, Revision 6, "Development of Emergency Action Levels for Non-Passive Reactors."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to the Seabrook emergency action levels neither involve any physical changes to plant equipment or systems nor do they alter the assumptions of any accident analyses. The proposed changes do not adversely affect accident initiators or precursors, and they do not alter design assumptions, plant configuration, or the manner in which the plant is operated and maintained. The proposed change does not adversely affect the ability of structures, systems or components (SSCs) to perform their intended safety functions in mitigating the consequences of an initiating event within the assumed acceptance limits.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. The changes do not challenge the integrity or performance of any safety-related systems. No plant equipment is installed or removed, and the changes do not alter the design, physical configuration, or method of operation of any plant SSC. No physical changes are made to the plant, and emergency action levels are not accident initiators[,] so no new causal mechanisms are introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Margin of safety is associated with the ability of the fission product barriers (*i.e.*, fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed changes do not impact operation of the plant and no accident analyses are affected by the proposed changes. The changes do not affect the Technical Specifications or the method of operating the plant. Additionally, the proposed changes will not relax any criteria used to establish safety limits and will not relax any safety system settings. The safety analysis acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis. The proposed changes do not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition.

Therefore, the proposed change do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William Blair, Managing Attorney—Nuclear, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Douglas A. Broaddus.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: March 16, 2016. A publicly-available version is in ADAMS under Accession No. ML16076A217.

Description of amendment request: The amendment would revise the technical specifications to allow the use of Optimized ZIRLO™ as an approved fuel rod cladding.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would allow the use of Optimized ZIRLO™ clad nuclear fuel in the reactors. The NRC approved topical report WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A "Optimized ZIRLO™," prepared by Westinghouse Electric Company LLC (Westinghouse), addresses Optimized ZIRLO™ and demonstrates that Optimized ZIRLO™ has essentially the same properties as currently licensed ZIRLO™. The fuel cladding itself is not an accident initiator and does not affect accident probability. Use of Optimized ZIRLO™ fuel cladding has been shown to meet all 10 CFR 50.46 acceptance criteria and, therefore, will not increase the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of Optimized ZIRLO™ clad fuel will not result in changes in the operation or configuration of the facility. Topical Report WCAP–12610–P–A and CENPD–404–P–A demonstrated that the material properties of Optimized ZIRLO™ are similar to those of ZIRLO®. Therefore, Optimized ZIRLO™ fuel rod cladding will perform similarly to those fabricated from ZIRLO®, thus precluding the possibility of the fuel becoming an accident initiator and causing a new or different type of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the Optimized ZIRLO™ are not significantly different from those of ZIRLO®. Optimized ZIRLO™ is expected to perform similarly to ZIRLO® for all normal operating and accident scenarios, including both loss of coolant accident (LOCA) and non-LOCA scenarios. For LOCA scenarios, plant-specific evaluations have been performed which allow the use of fuel assemblies with fuel rods containing Optimized ZIRLO™. These LOCA evaluations address the NRC SER [safety evaluation report] conditions and limitations for Optimized ZIRLO™ fuel rod cladding and provide continued compliance with the acceptance criteria of 10 CFR 50.46.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, 40 Iverness Center Parkway, Birmingham, AL 35201.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia; Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama; Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: March 14, 2016. A publicly-available version is in ADAMS under Accession No. ML16074A185.

Description of amendment request: The amendments would adopt the NRC-approved Technical Task Force Traveler TSTF–65–A, Revision 1, "Use of Generic Titles for Utility Positions." The proposed change would allow use of generic personnel titles in lieu of plant-specific titles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change has no effect on structures, systems, and components (SSCs) of the plants. There are no changes to plant operations, or to any design function or analysis that verifies the capability of an SSC to perform a design function. There are no previously evaluated accidents affected by this change. The proposed changes are administrative in nature, and as such, do not affect indicators of analyzed events or assumed mitigation of accidents or transients.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

This change has no effect on the design function or operation of SSCs, and will not affect the SSCs' operation or ability to perform their design functions. This change does not involve a physical alteration of the plants, add any new equipment, or allow any existing equipment to be operated in a manner different from the present method of operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed changes involve a significant reduction in a margin of safety?

This change is administrative in nature and has no effect on plant design margins. There are no changes being made to safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed change.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel of Operations and Nuclear, Southern Nuclear Operating Company, 40 Iverness Center Parkway, Birmingham, AL 35201.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 16, 2016. A publicly-available version is in ADAMS under Accession No. ML16076A217.

Description of amendment request: The amendments would revise the technical specifications to allow the use of Optimized ZIRLO™ as an approved fuel rod cladding.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would allow the use of Optimized ZIRLO™ clad nuclear fuel in the reactors. The NRC approved topical report WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A "Optimized ZIRLO™," prepared by Westinghouse Electric Company LLC (Westinghouse), addresses Optimized ZIRLO™ and demonstrates that Optimized ZIRLO™ has essentially the same properties as currently licensed ZIRLO™. The fuel cladding itself is not an accident initiator and does not affect accident probability. Use of Optimized ZIRLO™ fuel cladding has been shown to meet all 10 CFR 50.46 acceptance criteria and, therefore, will not increase the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of Optimized ZIRLO™ clad fuel will not result in changes in the operation or configuration of the facility. Topical Report WCAP–12610–P–A & CENPD– 404–P–A demonstrated that the material properties of Optimized ZIRLO™ are similar to those of ZIRLO®. Therefore, Optimized ZIRLO™ fuel rod cladding will perform similarly to those fabricated from ZIRLO®, thus precluding the possibility of the fuel becoming an accident initiator and causing a new or different type of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the Optimized

ZIRLO™ are not significantly different from those of ZIRLO®. Optimized ZIRLO™ is expected to perform similarly to ZIRLO® for all normal operating and accident scenarios, including both loss of coolant accident (LOCA) and non-LOCA scenarios. For LOCA scenarios, plant-specific evaluations have been performed which allow the use of fuel assemblies with fuel rods containing Optimized ZIRLO™. These LOCA evaluations address the NRC SER [safety evaluation report] conditions and limitations for Optimized ZIRLO™ fuel rod cladding and provide continued compliance with the acceptance criteria of 10 CFR 50.46.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, AL 35242.

NRC Branch Chief: Michael T. Markley.

Susquehanna Nuclear, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: January 28, 2016, as supplemented by letter dated April 6, 2016. Publicly-available versions are in ADAMS under Accession No. ML16029A031 and Package Accession No. ML16097A486, respectively.

Description of amendment request: The amendment would modify the Susquehanna Steam Electric Station (SSES), Unit 2, Technical Specification (TS) 3.7.1, "Residual Heat Removal Service Water (RHRSW) System and the Ultimate Heat Sink (UHS)," and TS 3.8.7, "Distribution Systems—Operating," to increase the completion time for Conditions A and B of TS 3.7.1 and Condition C of TS 3.8.7 from 72 hours to 7 days, in order to accommodate 480 volt (V) engineered safeguard system (ESS) load center (LC) transformer replacements on SSES, Unit 2. The proposed change is temporary and will be annotated by a note in each TS that specifies the allowance expires on June 15, 2020.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, along with NRC edits in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The temporary changes to the completion times for TS 3.8.7, Condition C and TS 3.7.1, Conditions A and B are necessary to implement plant changes, which replace the Unit 1—480 V ESS LC Transformers 1X210 and 1X220 in order to mitigate the loss of the transformer due to failure. The temporary change to the completion time for TS 3.8.7, Condition C is also necessary to implement plant changes, which replace the Unit 1—480 V ESS LC Transformers 1X230 and 1X240 in order to mitigate the loss of the transformer due to failure. These replacements decrease the probability of a transformer failure. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by these changes. No SSC [structure, system, or component] failure modes or mechanisms are being introduced, and the likelihood of previously analyzed failures remains unchanged.

The proposed change requests the Completion Time to restore a Unit 2 RHRSW subsystem be extended to 7 days in order to replace Unit 1 transformers 1X210 and 1X220. The extended Completion Times for TS 3.7.1 Conditions A and B are only applicable when transformers 1X210 or 1X220 are out of service with the intent of replacing the transformer.

During the replacements, the affected Unit 2 RHRSW subsystem will remain functional while the other subsystem of Unit 2 RHRSW will remain Operable. Operator action required to restore full capability of cooling provided by the Ultimate Heat Sink will only consist of manually operating two (2) valves; the Large Spray Array and the UHS bypass. This action can easily be completed within several hours and would restore full cooling to the RHRSW system.

Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes involve the increase of TS Completion Times to allow replacement of four (4) Unit 1—480 V ESS LC Transformers. New transformers will be installed but will not be operated in a new or different manner. There are no setpoints at which protective or mitigative actions are initiated [which are] affected by this change. These changes do not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alterations to procedures that ensure the plant remains within analyzed limits are being proposed, and no major changes are being made to procedures relied upon during off-normal events as described in the FSAR [final safety analysis report].

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Operational safety margin is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed changes are acceptable because the Completion Time extensions allow replacement of the Unit 1—480 V ESS LC Transformers, equipment essential to safe plant operation, while ensuring safety related functions of affected equipment are maintained.

With the RHRSW Spray Pond Return Bypass Valves on the out of service loop electrically de-powered in the open position, a return flow path will be established. Since the RHRSW Pumps on Unit 2 are not impacted by the transformers outages, the affected RHRSW Loop on Unit 2 will be capable of providing cooling. This configuration will continue to provide the margin of safety assumed by the safety analysis, although the affected RHRSW loop will be administratively declared Inoperable.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Damon D. Obie, Esquire, Associate General Counsel, Talen Energy Supply, LLC, 835 Hamilton St., Suite 150, Allentown, PA 18101.

NRC Branch Chief: Douglas A. Broaddus.

Tennessee Valley Authority, Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant, Units 1 and 2, Rhea County, Tennessee

Date of amendment request: December 8, 2015, as supplemented by letter dated March 11, 2016. Publicly-available versions are in ADAMS under Accession Nos. ML15342A477 and ML16071A456, respectively. The letter dated March 11, 2016, supersedes the December 8, 2015, amendment request in its entirety.

Description of amendment request: The amendments would revise the Watts Bar Nuclear Plant (WBN), Units 1 and 2, Technical Specification (TS) 3.8.1, "AC Sources—Operating," to extend the Completion Time (CT) for one inoperable Diesel Generator (DG) from 72 hours to 14 days, based on the availability of an alternate alternating current (AC) power source (specifically, the FLEX DG added as part of the mitigating strategies for beyond-design-basis events in response to NRC Order EA–12–049). The amendments would also make clarifying changes to certain TS 3.8.1 conditions, required actions, and surveillance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> 1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?
>
> Response: No.
>
> The proposed changes do not affect the design of the DGs, the operational characteristics or function of the DGs, the interfaces between the DGs and other plant systems, or the reliability of the DGs. Required Actions and their associated CTs are not considered initiating conditions for any UFSAR [Updated Final Safety Analysis Report] accident previously evaluated, nor are the DGs considered initiators of any previously evaluated accidents. The DGs are provided to mitigate the consequences of previously evaluated accidents, including a loss of off-site power.
>
> The consequences of previously evaluated accidents will not be significantly affected by the extended DG CT, because a sufficient number of onsite Alternating Current power sources will continue to remain available to perform the accident mitigation functions associated with the DGs, as assumed in the accident analyses. In addition, as a risk mitigation and defense-in-depth action, an independent AC power source, an available FLEX DG, will be available to support the ESF [engineered safety feature] bus with the inoperable DG during a SBO [station blackout].
>
> Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> 2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?
>
> Response: No.
>
> The proposed change does not involve a change in the permanent design, configuration, or method of operation of the plant. The proposed changes will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. The proposed changes allow operation of the unit to continue while a DG is repaired and retested with the FLEX DG in standby to mitigate a SBO event. The proposed extensions do not affect the interaction of a DG with any system whose failure or malfunction can initiate an accident. As such, no new failure modes are being introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> 3. Does the proposed amendment involve a significant reduction in a margin of safety?
>
> Response: No.
>
> The proposed changes do not alter the permanent plant design, including instrument set points, nor does it change the assumptions contained in the safety analyses. The FLEX DG alternate AC system is designed with sufficient redundancy such that a DG may be removed from service for maintenance or testing. The remaining DGs are capable of carrying sufficient electrical loads to satisfy the UFSAR requirements for accident mitigation or unit safe shutdown. The proposed changes do not affect the redundancy or availability requirements of offsite power supplies or change the ability of the plant to cope with station blackout events.
>
> Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Sherry A. Quirk, Executive Vice President and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Dr., 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Benjamin G. Beasley.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the "Obtaining Information and Submitting Comments" section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: June 23, 2014, as supplemented by letters dated August 26, 2014; December 15, 2014; January 22, 2015; April 23, 2015; and November 16, 2015.

Brief description of amendments: The amendments revised the Renewed Facility Operating Licenses and technical specifications (TSs) to implement a measurement uncertainty recapture (MUR) power uprate at Catawba Nuclear Station Unit 1 (Catawba 1) that increases the rated thermal power (RTP) from 3411 megawatts thermal (MWt) to 3469 MWt. This is an increase of approximately 1.7 percent RTP. This increase is based on the use of Cameron (a.k.a. Caldon) instrumentation to determine core power level with a power measurement uncertainty of approximately 0.3 percent. As noted in the licensee's application, although the MUR uprate was for Catawba 1, the amendment request was submitted for both units. This is because the TSs are common to both units.

Date of issuance: April 29, 2016.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 281 (Unit 1) and 277 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML16081A333; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: The amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register**:* November 4, 2014 (79 FR 65429). The supplemental letters dated August 26, 2014; December 15, 2014;

January 22, 2015; April 23, 2015; and November 16, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 2016.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina; Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370 McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina; Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: April 16, 2015.

Brief description of amendments: The amendments modified the technical specification (TS) requirements regarding steam generator tube inspections and reporting as described in Technical Specification Task Force (TSTF)-510, Revision 2, "Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection."

Date of issuance: April 26, 2016.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 280, 276, 284, 263, 396, 398, and 397. A publicly-available version is available in ADAMS under Accession No. ML16075A301.

Renewed Facility Operating License Nos. NPF–35, NPF–52, NPF–9, NPF–17, DPR–38, DPR–47, and DPR–55: Amendments revised the licenses and TSs.

*Date of initial notice in **Federal Register:*** June 23, 2015 (80 FR 35981).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 2016.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: May 19, 2015, as supplemented by letters dated August 20, 2015, and February 26, 2016.

Brief description of amendments: The amendments add a Reactor Protective System Nuclear Overpower—High Setpoint trip for three (3) reactor coolant pump operation to Technical Specification Table 3.3.1–1, "Reactor Protective System Instrumentation." The existing overpower protection for three (3) reactor coolant pump operation is the Nuclear Overpower Flux/Flow/Imbalance trip function. The new setpoint provides an absolute setpoint that can be actuated regardless of the transient or Reactor Coolant System flow conditions and provides a significant margin gain for the small steam line break accident.

Date of issuance: April 29, 2016.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 397 for Unit 1, 399 for Unit 2, and 398 for Unit 3. A publicly-available version is in ADAMS under Accession No. ML16088A330; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: The amendments revised the Renewed Facility Operating License and the TSs.

*Date of initial notice in **Federal Register:*** October 27, 2015 (80 FR 65810). The supplemental letter dated February 26, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 2016.

No significant hazards consideration comments received: No.

Duke Energy Progress, Inc., Docket No. 50–261, H. B. Robinson Steam Electric Plant Unit No. 2, Hartsville, South Carolina

Date of amendment request: May 13, 2015, as supplemented by letter dated November 19, 2015.

Brief description of amendment: The amendment adopted the NRC-endorsed Nuclear Energy Institute (NEI) 99–01, Revision 6, "Development of Emergency Action Levels for Non-Passive Reactors."

Date of issuance: April 28, 2016.

Effective date: As of the date of issuance and shall be implemented within 180 days of issuance.

Amendment No.: 245. A publicly-available version is in ADAMS under Accession No. ML16061A472; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–23: The amendment revised the emergency action level technical bases document.

*Date of initial notice in **Federal Register:*** August 4, 2015 (80 FR 46348). The supplemental letter dated November 19, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 2016.

No significant hazards consideration comments received: No.

Duke Energy Progress, Inc., Docket Nos. 50–325 and 50–324; Brunswick Steam Electric Plant, Unit Nos. 1 and 2, Brunswick County, North Carolina; Docket No. 50–400; Shearon Harris Nuclear Power Plant, Unit 1, Wake County, North Carolina; Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina; Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina; and Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: June 24, 2015, as supplemented by letter dated January 18, 2016.

Brief description of amendments: The amendments revise or add Surveillance Requirements to verify that the system locations susceptible to gas accumulation are sufficiently filled with water and to provide allowances which permit performance of the verification. The changes are being made to address the concerns discussed in NRC Generic Letter 2008–01, "Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems" (ADAMS Accession No. ML072910759). The amendments reference TSTF–523, Revision 2, "Generic Letter 2008–01, Managing Gas Accumulation" (79 FR 2700).

Date of issuance: April 29, 2016.

Effective date: As of the date of issuance and shall be implemented within 1 year.

Amendment Nos.: 270 and 298, for the Brunswick Steam Electric Plant, Unit Nos. 1 and 2; 150, for the Shearon Harris Nuclear Power Plant, Unit 1; 282 and 278, for the Catawba Nuclear Station, Units 1 and 2; 285 and 264, for the McGuire Nuclear Station, Units 1 and 2; and 398, 400, and 399, for the Oconee Nuclear Station, Units 1, 2, and 3. A publicly-available version is in ADAMS under Accession No. ML16085A113; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–71, DPR–62, for the Brunswick Steam Electric Plant, Unit Nos. 1 and 2; NPF–63, for the Shearon Harris Nuclear Power Plant, Unit 1; NPF–35 and NPF–52, for the Catawba Nuclear Station, Units 1 and 2; NPF–9 and NPF–17, for the McGuire Nuclear Station, Units 1 and 2; and DPR–38, DPR–47, DPR–55, for the Oconee Nuclear Station, Units 1, 2, and 3: The amendments revised the Renewed Facility Operating Licenses and the TSs.

Date of initial notice in **Federal Register:** August 14, 2015 (80 FR 48923). This **Federal Register** notice was corrected on August 20, 2015 (80 FR 50663). The supplemental letter dated January 18, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determinations as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 2016.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment request: June 11, 2015.

Brief description of amendment: This amendment revises the date of the Cyber Security Plan (CSP) Implementation Milestone 8 and the associated existing facility operating license condition regarding full implementation of the CSP. The CSP and associated implementation schedule was previously approved by the NRC staff by letter dated December 8, 2014 (ADAMS Accession No. ML14237A144).

Date of issuance: May 2, 2016.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 259. A publicly-available version is in ADAMS under Accession No. ML16078A068; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–20: Amendment revised the Renewed Facility Operating License.

Date of initial notice in **Federal Register:** August 4, 2015 (80 FR 46349).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: December 15, 2015, as supplemented by letter dated March 15, 2016.

Brief description of amendments: The amendments reduced the reactor steam dome pressure stated in the technical specifications (TSs) for the reactor core safety limits. The change addresses a 10 CFR part 21 issue concerning the potential to violate the safety limits during a pressure regulator failure maximum demand (open) transient.

Date of issuance: April 27, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendments Nos.: 306 and 310. A publicly-available version is in ADAMS under Accession No. ML16064A150; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in **Federal Register:** January 5, 2016 (81 FR 263). The supplemental letter dated March 15, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 27, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: December 23, 2015.

Brief description of amendments: The amendments revised Technical Specification (TS) Limiting Condition for Operation 3.10.1, "Inservice Leak and Hydrostatic Testing Operation," to allow more efficient testing during a refueling outage. The change is based on NRC-approved Technical Specification Task Force (TSTF) Improved Standard Technical Specifications Change Traveler, TSTF–484, Revision 0, "Use of TS 3.10.1 for Scram Time Testing Activities."

Date of issuance: May 9, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendments Nos.: 307 and 311. A publicly-available version is in ADAMS under Accession No. ML16084A968; documents related to these amendments are listed in the safety evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in **Federal Register:** March 1, 2016 (81 FR 10680).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 9, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Units 2 and 3, Grundy County, Illinois

Date of application for amendment: December 30, 2014, as supplemented by letters dated May 8, 2015, July 30, 2015, October 15, 2015, and February 8, 2016.

Brief description of amendment: The amendments allow revision to DNPS technical specifications (TSs) in support of a new nuclear criticality safety analysis methodology, use of a new fuel assembly design to store AREVA ATRIUM 10XM fuel in the DNPS spent fuel pools (SFPs), and addition of a new TS 4.3.1.1c criticality parameter related to the maximum in-rack infinite k-effective (k_{inf}) limit for fuel assemblies allowed to be stored in the SFP racks. Additionally, the DNPS licenses will be amended to ensure that any loss or reduction of SFP neutron-absorbing capacity will be promptly detected, and that the licensee will perform confirmatory testing to ensure that the minimum B–10 areal density continues to be met for the BORAL panels installed in the SFPs at DNPS.

Date of issuance: April 29, 2016.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 249 and 242. A publicly-available version is under ADAMS Accession No. ML15343A126;

documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–19 and DPR–25: The amendments revise the DNPS Technical Specifications and Licenses.

Date of initial notice in ***Federal Register:*** November 5, 2015 (80 FR 68573).

The supplements dated October 15, 2015, and February 8, 2016, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 2016.

No significant hazards consideration comments received: None.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: April 1, 2015, as supplemented by letters dated October 14, 2015, and February 19, 2016.

Brief description of amendment: This amendment revises certain technical specification minimum voltage and frequency acceptance criteria for emergency diesel generator testing.

Date of issuance: April 27, 2016.

Effective date: As of the date of issuance and shall be implemented by June 15, 2016.

Amendment No.: 291. A publicly-available version is in ADAMS under Accession No. ML16083A481. Documents related to this amendment are listed in the safely evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–3: Amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of notice in ***Federal Register:*** July 7, 2015 (80 FR 38759). The supplemental letters dated October 14, 2015, and February 19, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 27, 2016.

No significant hazards consideration comments received: No.

Florida Power & Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating, Unit Nos. 3 and 4, Miami-Dade County, Florida

Date of amendment request: April 16, 2015, as supplemented by letters dated December 7, 2015, and March 29, 2016.

Brief description of amendments: The amendments revised the technical specifications (TSs) related to the boric acid tank to reflect a correction to a calculation.

Date of issuance: April 26, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos: 270 (Unit No. 3) and 265 (Unit No. 4). A publicly-available version is in ADAMS under Accession No. ML16004A019; documents related to these amendments are listed in the safety evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** September 1, 2015 (80 FR 52806). The supplements dated December 7, 2015, and March 29, 2016, provided additional information that clarified the application and did not expand the scope of the application as originally noticed.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 2016.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: May 3, 2013, as supplemented February 14, 2014, April 2, 2014, May 13, 2014, August 13, 2014, and March 16, 2015.

Brief description of amendment: The amendment adds License Condition 2.C.(5) to the Humboldt Bay license. This new license condition incorporates the NRC approved "License Termination Plan" (LTP), and associated addendum, into the Humboldt Bay license and specifies limits on the changes the licensee is allowed to make to the approved LTP without prior NRC review and approval.

Date of issuance: May 4, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 45. A publicly-available version is in ADAMS under Accession No. ML15090A339; documents related to these amendments are listed in the safety evaluation enclosed with the amendments.

Facility Operating License No. DPR–7: This amendment revises the License.

Date of initial notice in ***Federal Register:*** September 3, 2013, (78 FR 54285).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 4, 2016.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC and Exelon Generation Company, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 3, 2015, as supplemented by letters dated June 2, 2015; November 27, 2015; February 3, 2016; February 10, 2016; and March 4, 2016.

Brief description of amendments: The amendments revised Technical Specification (TS) 3/4.3.1, "Reactor Trip System Instrumentation," to support planned plant modifications to replace the existing source range and intermediate range nuclear instrumentation with equivalent neutron monitoring systems to increase system reliability.

Date of issuance: April 28, 2016.

Effective date: As of the date of issuance and shall be implemented at Salem, Unit No. 1, during the fall 2017 refueling outage (1R25), and at Salem, Unit No. 2, during the spring 2017 refueling outage (2R22).

Amendment Nos.: 313 (Unit No. 1) and 294 (Unit No. 2). A publicly-available version is in ADAMS under Accession No. ML16096A419; documents related to these amendments are listed in the safety evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–70 and DPR–75: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** August 4, 2015 (80 FR 46350). The supplemental letters dated November 27, 2015; February 3, 2016; February 10, 2016; and March 4, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 28, 2016.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: September 29, 2015.

Brief description of amendment: The amendment adopts the NRC-approved Technical Specifications Task Force (TSTF) Improved Standard Technical Specifications Change Traveler TSTF–523, Revision 2, "Generic Letter 2008–01, Managing Gas Accumulation."

Date of issuance: May 6, 2016.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 204. A publicly-available version is in ADAMS under Accession No. ML16104A295; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–12: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** November 24, 2015 (80 FR 73241).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 2016.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: April 29, 2015, as supplemented by letters dated June 29, October 8, and November 11, 2015, and March 17, 2016.

Brief description of amendment: The amendments revised Technical Specification 6.8.3.j, "Containment Leakage Rate Testing Program," to allow a permanent extension of the Type A primary containment integrated leak rate testing frequency from once every 10 years to once every 15 years.

Date of issuance: April 29, 2016.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: Unit 1—210; Unit 2—197. A publicly-available version is in ADAMS under Accession No. ML16116A007; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** August 14, 2015 (80 FR 48942). The notice was corrected on August 20, 2015 (80 FR 50663). The supplemental letters dated October 8 and November 11, 2015, and March 17, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 2016.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama

Date of amendment request: September 25, 2015, as supplemented by letters dated December 28, 2015, and March 28, 2016.

Brief description of amendment: The amendment revised the technical specification (TS) Safety Limit Minimum Critical Power Ratio (SLMCPR) numeric values. The change decreased the numeric values of SLMCPR in TS Section 2.1.1.2 for single and two reactor recirculation loop operation based on the Cycle 12 SLMCPR evaluation.

Date of issuance: April 26, 2016.

Effective date: As of the date of issuance and shall be implemented during the Unit 1 refueling outage in the fall of 2016.

Amendment No.: 295. A publicly-available version is in ADAMS under Accession No. ML16028A414, documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–33: Amendment revised the Facility Operating License and TS.

Date of initial notice in ***Federal Register:*** January 5, 2016 (81 FR 276). The supplemental letters dated December 28, 2015, and March 28, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in an SE dated April 26, 2016.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 13th day of May 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–11976 Filed 5–23–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting Notice

DATE: May 23, 30, June, 6, 13, 20, 27, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of May 23, 2016

There are no meetings scheduled for the week of May 23, 2016.

Week of May 30, 2016—Tentative

Wednesday, June 1, 2016

9:00 a.m. Briefing on Security Issues (Closed Ex. 1).

Thursday, June 2, 2016

9:00 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting) (Contact: Andrew Waugh: 301–415–5601).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

2:00 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 & 6).

Week of June 6, 2016—Tentative

There are no meetings scheduled for the week of June 6, 2016.

Week of June 13, 2016—Tentative

There are no meetings scheduled for the week of June 13, 2016.

Week of June 20, 2016—Tentative

Monday, June 20, 2016

9:00 a.m. Meeting with Department of Energy Office of Nuclear Energy (Public Meeting) (Contact: Albert Wong: 301–415–3081).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, June 23, 2016

9:00 a.m. Discussion of Security Issues (Closed Ex. 3).

Week of June 27, 2016—Tentative

Tuesday, June 28, 2016

9:30 a.m. Briefing on Human Capital and Equal Opportunity Employment

(Public Meeting) (Contact: Kristin Davis: 301–287–0707)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: May 20, 2016.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–12337 Filed 5–20–16; 4:15 pm]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting Notice

TIME AND DATE: Thursday, June 9, 2016, 2 p.m. (OPEN Portion), 2:15 p.m. (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: Meeting OPEN to the Public from 2 p.m. to 2:15 p.m. Closed portion will commence at 2:15 p.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Tribute—James Torrey.
3. Approval—Charter of the Risk Committee of the Board.
4. Approval—Amended Charter of the Audit Committee of the Board.
5. Confirmation—Michele Perez.
6. Minutes of the Open Session of the March 17, 2016 Board of Directors Meeting.

FURTHER MATTERS TO BE CONSIDERED (CLOSED TO THE PUBLIC 2:15 P.M.):

1. Finance Project—Turkey.
2. Finance Project—Turkey.
3. Finance Project—Ukraine.
4. Finance Project—Ukraine.
5. Finance Project—Jordan and Middle East and North Africa.
6. Finance Project—Senegal.
7. Finance Project—Africa.
8. Finance Project—Brazil.
9. Finance Project—Global.
10. Minutes of the Closed Session of the March 17, 2016 Board of Directors Meeting.
11. Reports.
12. Pending Projects.

CONTACT PERSON FOR MORE INFORMATION: Information on the meeting may be obtained from Catherine F. I. Andrade at (202) 336–8768, or via email at *Catherine.Andrade@opic.gov.*

Dated: May 19, 2016.

Catherine F.I. Andrade,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 2016–12253 Filed 5–20–16; 11:15 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–67; Order No. 3298]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning contingency prices for an existing Global Plus 2C negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 25, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

On May 16, 2016, the Postal Service filed notice of contingency prices for the existing Global Plus 2C negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the letter to the customer (Letter) and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Letter and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 3.

The Postal Service seeks to change the price of International Business Reply Envelopes received from Canada. Letter at 1. The Postal Service intends for the contingency prices to become effective June 1, 2016. *Id.* The Postal Service asserts that the contingency prices are in compliance with the requirements of 39 U.S.C. 3633 and functionally equivalent to those contemplated by the Global Plus 2C baseline contract filed in Docket Nos. MC2012–5, CP2012–10, and CP2012–11. Notice at 4.

II. Notice of Filings

The Commission invites comments on whether the contingency prices presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than May 25, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Jennaca D. Upperman to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2015–67 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Jennaca D.

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[1] Notice of United States Postal Service of Prices Under Functionally Equivalent Global Plus 2C Negotiated Service Agreement, May 16, 2016 (Notice).

Upperman to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than May 25, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–12108 Filed 5–23–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No R2016–5; Order No. 3297]

Market Dominant Price Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service notice announcing rate adjustments affecting some market dominant domestic and international products and services, along with six temporary mailing promotions and proposed classification changes. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 6, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Overview
III. Initial Commission Action
IV. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3622 and 39 CFR part 3010, the Postal Service filed notice of its intent to adjust the prices of certain Market Dominant products.[1] The Postal Service seeks Commission approval of six temporary promotions applicable to First-Class Mail and Standard Mail during Calendar Year (CY) 2017. Notice at 1. The Postal Service also requests Commission approval to increase the price of First-Class Mail Parcels (FCMP), effective August 28, 2016. *Id.* The Postal Service also seeks to incorporate the Universal Postal Union's (UPU) January 2016 price increases for Inbound Letter Post in the price cap calculation.[2]

II. Overview

The Postal Service asserts that it provides the information required by 39 CFR 3010.12. *Id.* at 1. The Postal Service represents that it will inform the public of the proposed price adjustments consistent with 39 CFR 3010.12(a)(3). *Id.* at 2. Specifically, the Postal Service states that it will publish notice in the Postal Bulletin and the PCC Insider and issue a press release and postings on USPS.com and the Postal Explorer Web site. *Id.* The Postal Service asserts that its planned price adjustments comply with 39 U.S.C. 3622 and 3626. *Id.* at 1–5, 10–14.

A. Planned First-Class Mail and Standard Mail Promotions

The Postal Service seeks approval for the following six promotions for the periods indicated:

- Earned Value Reply Mail Promotion (January–June 2017),
- Tactile, Sensory and Interactive Mailpiece Engagement Promotion (February–July 2017),
- Emerging and Advanced Technology Promotion (March–August 2017),
- Direct Mail Starter Promotion (May–July 2017),
- Personalized Color Transpromo Promotion (July–December 2017), and
- Mobile Shopping Promotion (August–December 2017).

Id. at 7–9. The Postal Service asserts that five of these six promotions are continuations of CY 2016 promotions approved by the Commission in Docket No. R2016–2.[3] The Postal Service represents that it will update the five continuing promotions for CY 2017 to vary the duration of certain promotions, expand eligibility to include additional mailpieces and categories of qualifying technology, and vary the credit amounts. *Id.* at 6–9. The Postal Service proposes to offer one new promotion, the Direct Mail Starter Promotion, aimed to encourage small business mailers to design direct mail marketing campaigns that incorporate a qualifying technology (such as a QR code) that lead the consumer to a mobile-optimized Web site. *Id.* at 6, 8.

B. Inbound Letter Post and FCMP Price Increases

The Postal Service represents that its planned price increases would align FCMP "Retail" prices with the corresponding prices for First-Class Package Service (FCPS), a competitive product. *Id.* at 10. Specifically, the Postal Service indicates that it proposes increases to the one-, two-, and three-ounce rate cells in the FCMP "Retail" as well as the "Keys and Identification Devices" price categories. *Id.* at 10, n.7. The Postal Service notes that in January 2016, the UPU increased the prices for Inbound Letter Post. *Id.* at 3. The Postal Service represents that "[i]n First-Class Mail, th[e] additional [price cap] authority [resulting from the planned CY 2017 promotions] is offset by the impact of the price increases in FCMP and the incorporation of the January 2016 price increases for Inbound Letter Post in the price cap calculation." *Id.* (footnote omitted).

C. Contents of Notice

To support its Notice, the Postal Service filed its proposed changes to the Mail Classification Schedule, CY 2017 Promotions Calendar, and calculation of price cap authority. The Postal Service concurrently filed three library references, workpapers supporting its price cap calculation, along with an application for non-public treatment for one library reference.[4]

III. Initial Commission Action

The Commission establishes Docket No. R2016–5 to consider the matters raised by the Notice. The Commission invites comments on whether the Postal Service's filing is consistent with the requirements of 39 U.S.C. 3622 and 3626 and 39 CFR part 3010. Comments are due June 6, 2016. *See* 39 CFR 3010.11(a)(5); 3001.15. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

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[1] United States Postal Service Notice of Market-Dominant Price Adjustment, May 16, 2016 (Notice).

[2] *Id.* at 3. Prices for Inbound Letter Post, also called terminal dues, are the reimbursements foreign postal operators pay the Postal Service for delivery of international mail. Terminal dues are not set by the Postal Service; rather, they are set by the UPU.

[3] *Id.* at 6 (citing Docket No. R2016–2, Order No. 2861, Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, December 10, 2015).

[4] Library Reference USPS–LR–R2016–5/1, May 16, 2016 (First-Class Mail Workpapers); Library Reference USPS–LR–R2016–5/2, May 16, 2016 (Standard Mail Workpapers); Library Reference USPS–LR–R2016–5/NP1, May 16, 2016 (First-Class Mail International Workpapers (Nonpublic)). The non-public material consists of two Excel files pertaining to First-Class Mail International. *See* Notice of the United States Postal Service of Filing of USPS–LR–R2016–5/NP1, May 16, 2016, Attachment 1 at 1. *See* 39 CFR part 3007 for information on access to non-public material.

The Commission appoints Kenneth E. Richardson to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2016–5 to consider the matters raised by the Notice.

2. Comments are due June 6, 2016.

3. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–12107 Filed 5–23–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–71; Order No. 3300]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning contingency prices for an existing Global Plus 2C negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 25, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

On May 16, 2016, the Postal Service filed notice of contingency prices for the existing Global Plus 2C negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the letter to the customer (Letter) and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Letter and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 3.

The Postal Service seeks to change the price of International Business Reply Envelopes received from Canada. Letter at 1. The Postal Service intends for the contingency prices to become effective June 1, 2016. *Id.* The Postal Service asserts that the contingency prices are in compliance with the requirements of 39 U.S.C. 3633 and functionally equivalent to those contemplated by the Global Plus 2C baseline contract filed in Docket Nos. MC2012–5, CP2012–10, and CP2012–11. Notice at 4.

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than May 25, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Jennaca D. Upperman to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2015–71 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Jennaca D. Upperman to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than May 25, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–12110 Filed 5–23–16; 8:45 am]

BILLING CODE 7710–FW–P

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[1] Notice of United States Postal Service of Prices Under Functionally Equivalent Global Plus 2C Negotiated Service Agreement, May 16, 2016 (Notice).

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–69; Order No. 3299]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning contingency prices for an existing Global Plus 2C negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 25, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
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I. Introduction

On May 16, 2016, the Postal Service filed notice of contingency prices for the existing Global Plus 2C negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the letter to the customer (Letter) and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Letter and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 3.

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[1] Notice of United States Postal Service of Prices Under Functionally Equivalent Global Plus 2C Negotiated Service Agreement, May 16, 2016 (Notice).

The Postal Service seeks to change the price of International Business Reply Envelopes received from Canada. Letter at 1. The Postal Service intends for the contingency prices to become effective June 1, 2016. *Id.* The Postal Service asserts that the contingency prices are in compliance with the requirements of 39 U.S.C. 3633 and functionally equivalent to those contemplated by the Global Plus 2C baseline contract filed in Docket Nos. MC2012–5, CP2012–10, and CP2012–11. Notice at 4.

II. Notice of Filings

The Commission invites comments on whether the contingency prices presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than May 25, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Jennaca D. Upperman to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2015–69 for consideration of matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, the Commission appoints Jennaca D. Upperman to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments are due no later than May 25, 2016.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–12109 Filed 5–23–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Dragon Bright Mintai Botanical Technology Cayman Ltd., JinZangHuang Tibet Pharmaceuticals, Inc., and Macau Resources Group Ltd.; Order of Suspension of Trading

May 20, 2016.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dragon Bright Mintai Botanical Technology Cayman Ltd. (CIK No. 1516810), a Cayman Islands corporation with its principal place of business listed as Hong Kong, China with stock quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link") under the ticker symbol DGBMF, because it has not filed any periodic reports since the period ended December 31, 2012. On November 19, 2015, a delinquency letter was sent by the Division of Corporation Finance to Dragon Bright Mintai Botanical Technology Cayman Ltd. requesting compliance with its periodic filing obligations, and Dragon Bright Mintai Botanical Technology Cayman Ltd. received the delinquency letter on November 20, 2015, but failed to cure its delinquencies.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of JinZangHuang Tibet Pharmaceuticals, Inc. (CIK No. 910832), a void Delaware corporation with its principal place of business listed as Shandong Province, China with stock quoted on OTC Link under the ticker symbol JZHG, because it has not filed any periodic reports since the period ended March 31, 2013. On November 3, 2015, a delinquency letter was sent by the Division of Corporation Finance to JinZangHuang Tibet Pharmaceuticals, Inc. requesting compliance with its periodic filing obligations, and JinZangHuang Tibet Pharmaceuticals, Inc. received the delinquency letter on November 11, 2015, but failed to cure its delinquencies.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Macau Resources Group Ltd. (CIK No. 1557436), a British Virgin Islands corporation with its principal place of business listed as Hong Kong, China with stock quoted on OTC Link under the ticker symbol MRGLF, because it has not filed any periodic reports since the period ended December 31, 2013. On November 19, 2015, a delinquency letter was sent by the Division of Corporation Finance to Macau Resources Group Ltd.'s counsel requesting compliance with its periodic filing obligations, and Macau Resources Group Ltd.'s counel received the delinquency letter on November 20, 2015, but the issuer failed to cure its delinquencies.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 20, 2016, through 11:59 p.m. EDT on June 3, 2016.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–12289 Filed 5–20–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Ombudsman Matter Management System, OMB Control No. 3235–XXXX, SEC File No. 270–797

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission" or "SEC") is soliciting comments on the collection of information summarized below. The Commission plans to submit this new collection of information to the Office of Management and Budget for approval.

Members of the public who contact the Ombudsman for assistance currently do so by traditional mail, electronic mail, telephone, and facsimile. To make it easier for retail investors and others to contact the Ombudsman electronically, the Commission is developing the Ombudsman Matter Management System ("OMMS"), a new, electronic data collection system for the receipt, collection and analysis of inquiries, complaints, and recommendations from retail investors directed to the SEC Ombudsman and the Office of the Investor Advocate, and invites comment on OMMS. Through OMMS, members of the public may request assistance from the Ombudsman and staff using a web-based form (the "OMMS Form") tailored to gather information about matters within the scope of the Ombudsman's function and streamline the inquiry and response process.

The OMMS Form will facilitate communication with the Ombudsman via an electronic series of basic questions with user-friendly response features such as radio buttons, drop-down menu responses, pop-up explanation bubbles, Web page links, fillable narrative text fields, and document upload options. In addition, the OMMS Form incorporates functionality that, depending upon certain responses, pre-populates specific fields, and prompts the user to provide additional information. By eliciting specific information from the user, the OMMS Form will facilitate communication between the user and the Ombudsman, reduce response and resolution times, and maximize Ombudsman staff resources available for recording, processing, and responding to matters. The requested information collection is voluntary and will not change the contact methods currently available.

The Commission expects that OMMS will be operative and the OMMS Form publicly available through the Commission's Web site, *https://www.sec.gov.*

The Commission estimates that the total reporting burden for using the OMMS Form will be 250 hours. The calculation of this estimate depends on how many members of the public use the form each year and the estimated time it takes to complete the forms: 500 respondents × 30 minutes per submission = 250 burden hours. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The total estimated one-time cost to the federal government of creating OMMS and the OMMS Form is $400,000.

An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget control number.

Written comments are invited on all aspects of this proposed information collection request, in particular: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on users, including through the use of automated collection techniques or other forms of information technology.

Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication. Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 18, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12116 Filed 5–23–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of NuTech Energy Resources, Inc.; Order of Suspension of Trading

May 20, 2016.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NuTech Energy Resources, Inc. ("NERG") because of concerns regarding the accuracy and adequacy of information in the marketplace about the company's operations and the company's recent public announcements concerning an unsolicited tender offer. NERG is a Delaware corporation with its principal place of business located in Gillette, Wyoming. Its stock is quoted on OTC Link, operated by OTC Markets Group Inc., under the ticker: NERG.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on May 20, 2016, through 11:59 p.m. EDT on June 3, 2016.

By the Commission.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2016–12290 Filed 5–20–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Bodisen Biotech, Inc., China Global Media, Inc., China Heli Resource Renewable, Inc., and GFR Pharmaceuticals, Inc.; Order of Suspension of Trading

May 20, 2016.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bodisen Biotech, Inc. (CIK No. 1178552), a forfeited Delaware corporation with its principal place of business listed as Shaanxi, China with stock quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link") under the ticker symbol BBCZ, because it has not filed any periodic reports since the period ended June 30, 2013. On August 18, 2015, a delinquency letter was sent by the Division of Corporation Finance to Bodisen Biotech, Inc. requesting compliance with its periodic filing obligations, but Bodisen Biotech, Inc. refused to accept delivery of the delinquency letter.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Global Media, Inc. (CIK No. 1450015), a revoked Nevada corporation with its principal place of business listed as Hunan Province, China with stock quoted on OTC Link under the ticker symbol CGLO, because it has not filed any periodic reports since the period ended June 30, 2013. On August 18, 2015, a delinquency letter was sent by the Division of Corporation Finance to China Global Media, Inc. requesting compliance with its periodic filing obligations, and China Global Media, Inc. did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual).

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Heli Resource Renewable, Inc. (CIK No. 1081823), a British Virgin Islands corporation with its principal place of business listed as Xin Jiang Province, China with stock quoted on OTC Link under the ticker symbol CRRWF, because it has not filed any periodic reports since the period ended

December 31, 2012. On August 18, 2015, a delinquency letter was sent by the Division of Corporation Finance to China Heli Resource Renewable, Inc. requesting compliance with its periodic filing obligations, but China Heli Resource Renewable, Inc. did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual).

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GFR Pharmaceuticals, Inc. (CIK No. 1096294), a Nevada corporation with its principal place of business listed as Shaanxi Province, China with stock quoted on OTC Link under the ticker symbol GFRP, because it has not filed any periodic reports since the period ended March 31, 2013. On November 3, 2015, a delinquency letter was sent by the Division of Corporation Finance to GFR Pharmaceuticals, Inc. requesting compliance with its periodic filing obligations, and GFR Pharmaceuticals, Inc. received the delinquency letter on November 9, 2015, but failed to cure its delinquencies.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 20, 2016, through 11:59 p.m. EDT on June 3, 2016.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–12288 Filed 5–20–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 17Ad–17.
SEC File No. 270–412, OMB Control No. 3235–0469.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–2(c), (d), and (h), (17 CFR 240.17Ad–2(c), (d), and (h)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–17 requires transfer agents and broker-dealers to make two searches for the correct address of lost securityholders using an information database without charge to the lost securityholders. In addition, paying agents are required to attempt to notify lost payees at least once. The Commission staff estimates that the rule applies to approximately 301 broker dealers and 2,766 paying agent entities, including carrying firms, transfer agents, indenture trustees, custodians, and approximately 10% of issuers. The Commission staff estimates that the total burden is 88,619 hours, representing the hours associated with searches and notifications. Approximately 2,686 hours are associated with recordkeeping.

The retention period for the recordkeeping requirement under Rule 17Ad–17 is not less than three years following the date the notice is submitted. The recordkeeping requirement under this rule is mandatory to assist the Commission in monitoring compliance with the rule. This rule does not involve the collection of confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 18, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12115 Filed 5–23–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, May 26, 2016 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Chair White, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Adjudicatory matters; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: May 19, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–12291 Filed 5–20–16; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9579]

60-Day Notice of Proposed Information Collection: Application for A, G, or NATO Visa

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *July 25, 2016.*

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering "Docket Number: DOS–2016–0036" in the Search field. Then click the "Comment Now" button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov.* You must include the DS form number, information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Lage, who may be reached at *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for A, G, or NATO Visa.
- *OMB Control Number:* 1405–0100.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* DS–1648.
- *Respondents:* Foreign Government Officials.
- *Estimated Number of Respondents:* 150,000.
- *Estimated Number of Responses:* 150,000.
- *Average Time per Response:* 30 Minutes.
- *Total Estimated Burden Time:* 75,000 Hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The Department of State will use Form DS–1648 to elicit information from applicants for a renewal of A, G, or NATO visas, excluding A–3, G–5 and NATO–7 applicants. INA sections 101(a)(15)(A) and (G), and 22 CFR 41.25, describe the criteria for these nonimmigrant visa classifications.

Methodology: The DS–1648 will be submitted electronically to the Department via the Internet. The applicant will be instructed to print a confirmation page containing a bar coded record locator, which will be scanned at the time of processing.

Dated:May 11, 2016.

Ed Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2016–12234 Filed 5–23–16; 8:45 am]

BILLING CODE 4710–06–P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting

AGENCY: State Justice Institute.

ACTION: Notice of meeting.

SUMMARY: The SJI Board of Directors will be meeting on Monday, June 13, 2016 at 9:30 a.m. The meeting will be held at SJI Headquarters in Reston, Virginia. The purpose of this meeting is to consider grant applications for the 3rd quarter of FY 2016, and other business. All portions of this meeting are open to the public.

ADDRESSES: State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *contact@sji.gov.*

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2016–12232 Filed 5–23–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Sixth Meeting: RTCA Special Committee 217 (SC–217) Aeronautical Databases (Joint With EUROCAE WG–44 Aeronautical Databases)

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of Twenty-Sixth RTCA Special Committee 217 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Twenty-Sixth RTCA Special Committee 217 meeting.

DATES: The meeting will be held July 18–22, 2016 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at Boeing, 7501 12th Ave S., Seattle, WA 98108.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Jennifer Iversen, Program Director, RTCA, Inc., *jiversen@rtca.org,* (202) 330–0662; Anna Von Groote, EUROCAE Technical Programme Manager, *anna.vongroote@eurocae.net,* +33 1 40 92 79 26; Brian Gilbert, *brian.d.gilbert@boeing.com,* (425) 237–7720; or Stephane Dubet, *Stephane.Dubet@aviation-civile.gouv.fr,* +33 5 57 92 57 81.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 217. The agenda will include the following:

Monday, July 18, 2016 (9:00 a.m.–12:00 p.m.) Opening Plenary Session

1. Co-Chairmen's remarks and introductions
2. Housekeeping
3. Approve minutes from 25th meeting
4. Review and approve meeting agenda for 26th meeting
5. Action item list review
6. Review of the ISRA with SC206
7. Document update process—method for proposing changes
8. Presentations (TBD)

Monday–Thursday, July 18–21, 2016 (12:00 p.m.–5:00 p.m.) Working Group Sessions

1. Sub-team report-outs
   a. Document structure
   b. Background/PBN principles
   c. Data preparation rules
   d. Data quality
   e. Procedure encoding
   f. Aeronautical information basics
2. Status of EASA PBN IR
3. Presentation: Typical issues with State data or procedures <expected based on action item>
4. RNP Data Block proposal <expected based on action item>
5. Application appendix input review <expected based on action items 25–07 and 25–10 through 25–17>
6. Draft of requirements tables based on data catalog <expected based on action item>
7. Review inputs for action items 25–18 through 25–23
8. New proposals

Friday, July 22, 2016 (9:00 a.m.–1:00 p.m.) Closing Plenary Session

1. Meeting wrap-up: Main conclusions and way forward
2. Review of action items
3. Next meetings
4. Any other business

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 19, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–12215 Filed 5–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–16]

Petition for Exemption; Summary of Petition Received; Columbia Helicopters, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 13, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–0604 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brent Hart (202) 267–4034, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 9, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–0604.

Petitioner: Columbia Helicopters, Inc.

Section(s) of 14 CFR Affected: 61.63(d)(1), 61.63(e)(1) and 61.157(g).

Description of Relief Sought: The petitioner seeks the exemption to allow Columbia Helicopters, Inc. (CHI) pilot applicants to utilize CHI-owned Boeing Model 234 helicopters to demonstrate instrument maneuvers as well as to use the Model 234 to take the practical test for an "Aircraft Type Rating Limited to VFR" in the *ATP Practical Test Standards for Helicopters.*

[FR Doc. 2016–12128 Filed 5–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Meeting: RTCA Program Management Committee (PMC)

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the RTCA Program Management Committee meeting.

DATES: The meeting will be held June 21, 2016 from 8:30 a.m.–4:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Karan Hofmann, Program Director, RTCA, Inc., *khofmann@rtca.org,* (202) 330–0680.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Program Management Committee. The agenda will include the following:

Tuesday, June 21, 2016

1. WELCOME AND INTRODUCTIONS
2. REVIEW/APPROVE
   a. Meeting Summary March 17, 2016
3. PUBLICATION CONSIDERATION/APPROVAL
   a. Final Draft, Revised Document, DO–230F—Standards for Airport

Security Access Control Systems, prepared by SC–224

4. INTEGRATION and COORDINATION COMMITTEE (ICC)
   a. Review of MOPS and MASPS Guide Documents—Update
   b. Cross Cutting Committee (CCC) Process Recommendations—Discussion
5. PAST ACTION ITEM REVIEW
   a. Bilateral Oversight Board Agreement Posting—Update
   b. ARINC ATC Winds Work—Update
   c. Feedback on NextGen Advisory Council Performance Based Navigation Study—Update
   d. SC–214 participation with SC–223 Internet Protocol Suites Activity—Update
   e. Ad-hoc on change to Risk Base vs. Performance Base Recommendations—Update
      i. Runway Overrun Alerting—Status—Possible new SC
      ii. Wireless Avionics Intra Communication—Status—Possible new SC
      iii. Global Aeronautical Distress and Safety System—Discussion
   f. URL for Library Equipment Options—Update
6. DISCUSSION
   a. Design Assurance Guidance for Airborne Electronic Hardware—Status—Possible New Special Committee (SC) to Update RTCA DO–254
   b. SC–225—Rechargeable Lithium Batteries and Battery Systems—Discussion—Update on DO–311 Revision
   c. SC–228—Minimum Performance Standards for Unmanned Aircraft Systems—Discussion—TOR Update—Possible Revision
   d. SC–229—406 MHz Emergency Locator Transmitters (ELTs)—Discussion—Revised TOR
   e. NAC—Status Update
   f. TOC—Status Update
   g. FAA Actions Taken on Previously Published Documents—Report
   h. Special Committees—Chairmen's Reports and Active Inter-Special Committee Requirements Agreements (ISRA)—Review
   i. European/EUROCAE Coordination—Status Update
7. OTHER BUSINESS
   a. Cyber Security in Mission Critical Environments—Presentation
   b. Drone Advisory Committee (DAC)—Presentation
   c. Document Page Numbering—Discussion
8. SCHEDULE for COMMITTEE DELIVERABLES and NEXT MEETING DATE
9. NEW ACTION ITEM SUMMARY

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 19, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–12218 Filed 5–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourteenth Meeting: RTCA Tactical Operations Committee (TOC)

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of Fourteenth RTCA Tactical Operations Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Fourteenth RTCA Tactical Operations Committee meeting.

DATES: The meeting will be held June 23, 2016 from 9:00 a.m.–4:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Trin Mitra, TOC Secretary, RTCA, Inc., *tmitra@rtca.org,* (202) 330–0655.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Tactical Operations Committee. The agenda will include the following:

Thursday, June 23, 2016

1. Opening of Meeting/Introduction of TOC Members—Co Chairs Dale Wright and Bryan Quigley
2. Official Statement of Designated Federal Official—Elizabeth Ray
3. Approval of April 4, 2016 Meeting Summary
4. FAA Update—Elizabeth Ray
5. Update from Ongoing Task Groups
   a. PBN Route Structure Task Group
   b. Graphical TFR Task Group
6. FAA Responses from Previous Recommendations
   a. Airport Construction
   b. National Procedure Assessment
   c. NorCal Noise Initiative
   d. Caribbean Operations
   e. Class B Airspace
7. Briefing on Commercial Space
8. Update on NextGen Advisory Committee (NAC)
9. Briefing on Drone Advisory Committee (DAC)
10. Other Business
11. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 19, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–12214 Filed 5–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Forty-First Meeting: RTCA Special Committee 224 (SC–224) Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of Forty-First RTCA Special Committee 224 Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Forty-First RTCA Special Committee 224 meeting.

DATES: The meeting will be held June 16, 2016 from 10:00 a.m.–1:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Karan Hofmann, Program Director, RTCA, Inc., *khofmann@rtca.org,* (202) 330–0680.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 224. The agenda will include the following:

Thursday, June 15, 2016

1. Welcome/Introductions/Administrative Remarks
2. Review/Approve Previous Meeting Summary
3. Report from the TSA
4. Report on Safe Skies on Document Distribution
5. Report on TSA Security Construction Guidelines progress
6. Review of DO–230H Sections
7. Action Items for Next Meeting
8. Time and Place of Next Meeting
9. Any Other Business
10. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 19, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–12213 Filed 5–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0033]

Pipeline Safety: Gas and Liquid Advisory Committee Member Nominations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Request for nominations for members: Gas and Liquid Pipeline Advisory Committees; vacancies.

SUMMARY: PHMSA is requesting nominations for individuals to serve on the Gas Pipeline Advisory Committee (GPAC), also known as the Technical Pipeline Safety Standards Committee, and the Liquid Pipeline Advisory Committee (LPAC), also known as the Technical Hazardous Liquid Pipeline Safety Standards Committee. The GPAC is composed of 15 members appointed by the Secretary of Transportation after consulting with public and private agencies concerned with the technical aspect of transporting gas or operating a gas pipeline facility. The LPAC is composed of 15 members appointed by the Secretary after consulting with public and private agencies concerned with the technical aspect of transporting hazardous liquid or operating a hazardous liquid pipeline facility.

With this notice, PHMSA is seeking nominations for two individuals from the general public: one on the LPAC and one on the GPAC. Additionally, PHMSA is seeking to fill four state commissioner vacancies, two on each committee and one federal government vacancy on the GPAC committee.

DATES: Nominations must be received by June 23, 2016.

ADDRESSES: All nomination material should be emailed to Advisory Committee Program Manager Cheryl Whetsel at *Cheryl.whetsel@dot.gov* or mailed to the Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Ave. SE., PHP–30, E24–445, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, (202) 366–4431 or *cheryl.whetsel@dot.gov.* Information about the GPAC and LPAC can also be obtained by visiting PHMSA's Web site by using the following link: *http://www.phmsa.dot.gov/pipeline/regs/technical-advisory-comm.*

SUPPLEMENTARY INFORMATION:

I. Advisory Committee Background

The GPAC and LPAC are statutorily mandated advisory committees that provide recommendations and advice on PHMSA's proposed safety standards, risk assessments, and safety policies for gas pipelines and for hazardous liquid pipelines. Both committees were established in accordance with the Federal Advisory Committee Act (FACA) and 49 U.S.C. 60115.

No later than 90 days after receiving a proposed standard and supporting analyses, the appropriate committee prepares and submits a report to the Secretary of Transportation on the technical feasibility, reasonableness, cost-effectiveness, and practicability of the proposed standard. The Secretary must publish each report, including any recommended actions and minority views. The Secretary is not bound by the committee's conclusions. However, if the Secretary rejects them, he must publish the reasons.

Pursuant to 49 U.S.C. 60115, the Secretary of Transportation has the authority to appoint to each committee (1) five individuals from departments, agencies, and instrumentalities of the U.S. Government and of the states; (2) five individuals from the natural gas or hazardous liquid industry, selected in consultation with industry representatives; and (3) five individuals selected from the general public. Two of the individuals selected for each committee from the government must be state commissioners.

At least three of the individuals selected for each committee from the industry must be currently in the active operation of natural gas or hazardous liquid pipelines or pipeline facilities. At least one individual selected for each committee serving from the industry must have education, background, or experience in risk assessment and cost-benefit analysis.

Two of the individuals selected for each committee from the general public must have education, background, or experience in environmental protection or public safety. At least one individual selected for each committee serving from the general public must have education, background, or experience in risk assessment and cost-benefit analysis. At least one individual selected for each committee from the general public may not have any financial interest in pipeline, petroleum, or natural gas industries. No individuals selected for a committee serving from the general public may have a significant financial interest in the pipeline, petroleum, or gas industry.

II. Criteria for Committee Members

The committee members selected by the Secretary of Transportation must be knowledgeable in the safety regulation of transporting natural gas or hazardous liquids or operating a natural gas or hazardous liquid pipeline facility or, nominees that are technically qualified, by training, experience or knowledge, in at least one field of engineering applicable to transporting gas or hazardous liquids or operating a gas or hazardous liquid pipeline facility. Members must also meet the applicable criteria mentioned under section I of this notice. Nominees should represent a broad constituency whose views the candidate can represent. Individuals associated with organizations concerned with fire safety, pipeline engineering, risk analysis, emergency response, and other similar public safety groups as well as environmental protection groups may have the knowledge and experience we are looking for. In addition, experience working in a consensus building environment would be helpful. The Secretary will consult with the national organization of State commissioners before selecting any state commissioner. Additionally, the Secretary will consult with the national organizations representing the owners and operators of pipeline facilities before selecting individuals from the industry.

III. Terms of Service

- Each member serves a three-year term, unless the member becomes unable to serve, resigns, ceases to be qualified to serve, or is removed by the Secretary.
- Members may be reappointed.
- All members serve at their own expense and receive no salary from the Federal Government, although travel reimbursement and per diem may be provided.
- The GPAC and LPAC generally meet in-person in the Washington, DC, Metropolitan area.
- PHMSA will ask potential public candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

IV. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on the advisory committee. Self-nominations are also accepted.

- Nominations must include a current, complete résumé including current business address and/or home address, telephone number, and email address, education, professional or business experience, present occupation, and membership on other advisory committees past or present) for each nominee.
- Each nominee must meet the training, education or experience requirements listed under section II above.
- Nominations must also specify the advisory committee for which the nominee is recommended (the GPAC or LPAC).
- Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated.

Issued in Washington, DC, on May 18, 2016, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 2016–12136 Filed 5–23–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; request for comments.

SUMMARY: The Board of Trustees of the Teamsters Local Union No. 469 Pension Plan (Teamsters Local 469 Pension Plan), a multiemployer pension plan, has submitted an application to Treasury to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Teamsters Local 469 Pension Plan has been published on the Treasury Web site, and to request public comments on the application from interested parties, including contributing employers, employee organizations, and participants and beneficiaries of the Teamsters Local 469 Pension Plan.

DATES: Comments must be received by June 22, 2016.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW., Room 1224, Washington, DC 20220. Attn: Deva Kyle. Comments sent via facsimile and email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the Internet can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Board of Trustees of the Teamsters Local 469 Pension Plan, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Reform Act of 2014 (MPRA) amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which the Department of the Treasury (Treasury), in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Secretary of Labor, is required to approve or deny.

On March 31, 2016, the Board of Trustees of the Teamsters Local 469 Pension Plan submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's Web site at *http://www.treasury.gov/services/Pages/* Plan-Applications.aspx. Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Teamsters Local 469 Pension Plan application.

Comments are requested from interested parties, including contributing employers, employee organizations, and participants and beneficiaries of the Teamsters Local 469 Pension Plan. Consideration will be given to any comments that are timely received by Treasury.

Dated: May 17, 2016.

David R. Pearl,

Executive Secretary, Department of the Treasury.

[FR Doc. 2016–12104 Filed 5–23–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0783 (10–10073, 10073a, 10073b, 10073c)]

Proposed Information Collection (Nonprofit Research and Education Corporations (NPCs) Data Collection)

ACTIVITY: Comment Request.

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate the information collected in the NPC Annual Report Template from the NPCs that is not used in preparing the NPC Annual Report to Congress. Information is used by VA in the conduct of its oversight of the NPCs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 25, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Brian McCarthy, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *Brian.McCarthy4@va.gov.* Please refer to "OMB Control No. 2900–0783 (Nonprofit Research and Education Corporations (NPCs) Data Collection)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 461–6345.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Nonprofit Research and Education Corporations (NPCs) Data Collection.

a. Annual Report Template, VA Form 10–10073.

b. Audit Actions Items Remediation Plans, VA Form 10–10073 A.

c. NPPO Internal Control Questionnaire, VA Form 10–10073 B.

d. NPPO Operations Oversight Questionnaire, VA Form 10–10073 C.

OMB Control Number: 2900–0783.

Type of Review: Revision of a currently approved collection.

Abstract: The combined NPC Annual Report to Congress is described in section 7366 (d) "The Secretary (DVA) shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the corporations (NPCs) established under this subchapter." Section 7366(d) goes on to list some of the specific information required by Congress. The sources for all of the information contained in the NPC Annual Report to Congress are the individual NPC Annual Report Templates submitted by each of the NPCs.

Affected Public: Individuals or households.

Estimated Annual Burden: 858 burden hours.

a. NPC Annual Report Template—301 hrs.

b. NPC Audit Actions Items Remediation Plans—84 hrs.

c. NPPO Internal Control Questionnaire—344 hrs.

d. NPPO Operations Oversight Questionnaire—129 hrs.

Estimated Average Burden Per Respondent:

a. NPC Annual Report Template—210 minutes.

b. NPC Audit Actions Items Remediation Plans—120 minutes.

c. NPPO Internal Control Questionnaire—240 minutes.

d. NPPO Operations Oversight Questionnaire—90 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 300.

a. NPC Annual Report Template—86.

b. NPC Audit Actions Items Remediation Plans—42.

c. NPPO Internal Control Questionnaire—86.

d. NPPO Operations Oversight Questionnaire—86.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–12088 Filed 5–23–16; 8:45 am]

BILLING CODE 8320–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Tuesday,
No. 100 May 24, 2016

Part II

Bureau of Consumer Financial Protection

12 CFR Part 1040
Arbitration Agreements; Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1040

[Docket No. CFPB–2016–0020]

RIN 3170–AA51

Arbitration Agreements

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: Pursuant to section 1028(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203), the Bureau of Consumer Financial Protection (Bureau) is proposing to establish 12 CFR part 1040, which would contain regulations governing two aspects of consumer finance dispute resolution. First, the proposed rule would prohibit covered providers of certain consumer financial products and services from using an agreement with a consumer that provides for arbitration of any future dispute between the parties to bar the consumer from filing or participating in a class action with respect to the covered consumer financial product or service. Second, the proposal would require a covered provider that is involved in an arbitration pursuant to a pre-dispute arbitration agreement to submit specified arbitral records to the Bureau. The Bureau proposes that the rulemaking would apply to certain consumer financial products and services. The Bureau is also proposing to adopt official interpretations to the proposed regulation.

DATES: Comments must be received on or before August 22, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2016–0020 or RIN 3170–AA51, by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2016–0020 or RIN 3170–AA51 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Owen Bonheimer, Benjamin Cady, Lawrence Lee, Nora Rigby, Counsels; Eric Goldberg, Senior Counsel, Office of Regulations, Consumer Financial Protection Bureau, at 202–435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The Bureau of Consumer Financial Protection (Bureau) is proposing regulations governing agreements that provide for the arbitration of any future disputes between consumers and providers of certain consumer financial products and services. Congress directed the Bureau to study these pre-dispute arbitration agreements in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank or Dodd-Frank Act).[1] In 2015, the Bureau published and delivered to Congress a study of arbitration.[2] In the Dodd-Frank Act, Congress also authorized the Bureau, after completing the Study (hereinafter Study), to issue regulations restricting or prohibiting the use of arbitration agreements if the Bureau found that such rules would be in the public interest and for the protection of consumers.[3] Congress also required that the findings in any such rule be consistent with the Bureau's Study.[4]

In accordance with this authority, the Bureau is now issuing this proposal and request for public comment. The proposed rule would impose two sets of limitations on the use of pre-dispute arbitration agreements by covered providers of consumer financial products and services. First, it would prohibit providers from using a pre-dispute arbitration agreement to block consumer class actions in court and would require providers to insert language into their arbitration agreements reflecting this limitation. This proposal is based on the Bureau's preliminary findings—which are consistent with the Study—that pre-dispute arbitration agreements are being widely used to prevent consumers from seeking relief from legal violations on a class basis, and that consumers rarely file individual lawsuits or arbitration cases to obtain such relief.

Second, the proposal would require providers that use pre-dispute arbitration agreements to submit certain records relating to arbitral proceedings to the Bureau. The Bureau intends to use the information it collects to continue monitoring arbitral proceedings to determine whether there are developments that raise consumer protection concerns that may warrant further Bureau action. The Bureau intends to publish these materials on its Web site in some form, with appropriate redactions or aggregation as warranted, to provide greater transparency into the arbitration of consumer disputes.

The proposal would apply to providers of certain consumer financial products and services in the core consumer financial markets of lending money, storing money, and moving or exchanging money, including most providers that are engaged in:

- Extending or regularly participating in decisions regarding consumer credit under Regulation B implementing the Equal Credit Opportunity Act (ECOA), engaging primarily in the business of providing referrals or selecting creditors for consumers to obtain such credit, and the acquiring, purchasing, selling, or servicing of such credit;

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[1] Public Law 111–203, 124 Stat. 1376 (2010), section 1028(a).

[2] Bureau of Consumer Fin. Prot., *Arbitration Study: Report to Congress, Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)* (2015), *available at http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.* Specific portions of the Study are cited in this proposal where relevant, and the entire Study will be included in the docket for this rulemaking at *www.regulations.gov. See* Bureau of Consumer Fin. Prot., Request for Information Regarding Scope, Methods and Data Sources for Conducting Study of Pre-Dispute Arbitration Agreements, 77 FR 25148 (Apr. 27, 2012) (hereinafter Arbitration Study RFI). Before releasing the Study, the Bureau released preliminary results in late 2013. Bureau of Consumer Fin. Prot., *Arbitration Study Preliminary Results* (Dec. 12, 2013) (hereinafter Preliminary Results), *available at http://files.consumerfinance.gov/f/201312_cfpb_arbitration-study-preliminary-results.pdf.*

[3] Dodd-Frank section 1028(b).

[4] *Id.*

- extending or brokering of automobile leases as defined in Bureau regulation;
- providing services to assist with debt management or debt settlement, modify the terms of any extension of consumer credit, or avoid foreclosure;
- providing directly to a consumer a consumer report as defined in the Fair Credit Reporting Act, a credit score, or other information specific to a consumer from a consumer report, except for adverse action notices provided by an employer;
- providing accounts under the Truth in Savings Act and accounts and remittance transfers subject to the Electronic Fund Transfer Act;
- transmitting or exchanging funds (except when integral to another product or service not covered by the proposed rule), certain other payment processing services, and check cashing, check collection, or check guaranty services consistent with the Dodd-Frank Act; and
- collecting debt arising from any of the above products or services by a provider of any of the above products or services, their affiliates, an acquirer or purchaser of consumer credit, or a person acting on behalf of any of these persons, or by a debt collector as defined by the Fair Debt Collection Practices Act.

Consistent with the Dodd-Frank Act, the proposed rule would apply only to agreements entered into after the end of the 180-day period beginning on the regulation's effective date.[5] The Bureau is proposing an effective date of 30 days after a final rule is published in the **Federal Register**. To facilitate implementation and ensure compliance, the Bureau is proposing language that providers would be required to insert into such arbitration agreements to explain the effect of the rule. The proposal would also permit providers of general-purpose reloadable prepaid cards to continue selling packages that contain non-compliant arbitration agreements, if they give consumers a compliant agreement as soon as consumers register their cards and the providers comply with the proposed rule's requirement not to use an arbitration agreement to block a class action.

II. Background

Arbitration is a dispute resolution process in which the parties choose one or more neutral third parties to make a final and binding decision resolving the dispute.[6] Parties may include language in their contracts, before any dispute has arisen, committing to resolve future disputes between them in arbitration rather than in court or allowing either party the option to seek resolution of a future dispute in arbitration. Such pre-dispute arbitration agreements—which this proposal generally refers to as "arbitration agreements"[7]—have a long history, primarily in commercial contracts, where companies typically bargain to create agreements tailored to their needs.[8] In 1925, Congress passed what is now known as the Federal Arbitration Act (FAA) to require that courts enforce agreements to arbitrate, including those entered into both before and after a dispute has arisen.[9]

In the last few decades, companies have begun inserting arbitration agreements in a wide variety of standard-form contracts, such as in contracts between companies and consumers, employees, and investors. The use of arbitration agreements in such contracts has become a contentious legal and policy issue due to concerns about whether the effects of arbitration agreements are salient to consumers, whether arbitration has proved to be a fair and efficient dispute resolution mechanism, and whether arbitration agreements effectively discourage the filing or resolution of certain claims in court or in arbitration.

In light of these concerns, Congress has taken steps to restrict the use of arbitration agreements in connection with certain consumer financial products and services and other consumer and investor relationships. Most recently, in the 2010 Dodd-Frank Act, Congress prohibited the use of arbitration agreements in connection with mortgage loans,[10] authorized the Securities and Exchange Commission (SEC) to regulate arbitration agreements in contracts between consumers and securities broker-dealers or investment advisers,[11] and prohibited the use of arbitration agreements in connection with certain whistleblower proceedings.[12]

In addition, and of particular relevance here, Congress directed the Bureau to study the use of arbitration agreements in connection with other, non-mortgage consumer financial products and services and authorized the Bureau to prohibit or restrict the use of such agreements if it finds that such action is in the public interest and for the protection of consumers.[13] Congress also required that the findings in any such rule be consistent with the Study.[14] The Bureau solicited input on the appropriate scope, methods, and data sources for the Study in 2012[15] and released results of its three-year study in March 2015.[16] Part III of this proposed rule summarizes the Bureau's process for completing the Study and its results. To place these results in greater context, this Part provides a brief overview of: (1) Consumers' rights under Federal and State laws governing consumer financial products and services; (2) court mechanisms for seeking relief where those rights have been violated, and, in particular, the role of the class action device in protecting consumers; and (3) the evolution of arbitration agreements and their increasing use in markets for consumer financial products and services.

A. Consumer Rights Under Federal and State Laws Governing Consumer Financial Products and Services

Companies often provide consumer financial products and services under the terms of a written contract. In addition to being governed by such contracts and the relevant State's contract law, the relationship between a consumer and a financial service provider is typically governed by consumer protection laws at the State level, Federal level, or both, as well as by other State laws of general applicability (such as tort law). Collectively, these laws create legal rights for consumers and impose duties on the providers of financial products and services that are subject to those laws.

Early Consumer Protection in the Law

Prior to the twentieth century, the law generally embraced the notion of *caveat emptor* or "buyer beware."[17] State

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[5] Dodd-Frank section 1028(d).

[6] *Arbitration*, Black's Law Dictionary (10th ed. 2014).

[7] Proposed § 1040.2(d) would define the phrase "pre-dispute arbitration agreement." When referring to the definition, in proposed § 1040.2(d), this proposal will use the full term or otherwise clarify the intended usage.

[8] *See infra* Part II.C.

[9] 9 U.S.C. 1 *et seq.*

[10] Dodd-Frank section 1414(e) (codified as 15 U.S.C. 1639c(e)).

[11] Dodd-Frank sections 921(a) and 921(b) (codified as 15 U.S.C. 78o(o) and 15 U.S.C. 80b–5(f)).

[12] Dodd-Frank section 922(b) (codified as 18 U.S.C. 1514A(e)).

[13] Dodd-Frank section 1028(b).

[14] *Id.*

[15] Arbitration Study RFI, *supra* note 2.

[16] Study, *supra* note 2. The Bureau also delivered the Study to Congress. *See also* Letter from Catherine Galicia, Ass't Dir. of Legis. Aff., Bureau of Consumer Fin. Prot. to Hon. Jeb Hensarling, Chairman, Comm. on Fin. Serv. (Mar. 10, 2015) (on file with the Bureau).

[17] *Caveat emptor* assumed that buyer and seller conducted business face to face on roughly equal

Continued

common law afforded some minimal consumer protections against fraud, usury, or breach of contract, but these common law protections were limited in scope. In the first half of the twentieth century, Congress began passing legislation intended to protect consumers, such as the Wheeler-Lea Act of 1938.[18] The Wheeler-Lea Act amended the Federal Trade Commission Act of 1914 (FTC Act) to provide the FTC with the authority to pursue unfair or deceptive acts and practices.[19] These early Federal laws did not provide for private rights of action, meaning that they could only be enforced by the government.

Modern Era of Federal Consumer Financial Protections

In the late 1960s, Congress began passing consumer protection laws focused on financial products, beginning with the Consumer Credit Protection Act (CCPA) in 1968.[20] The CCPA included the Truth in Lending Act (TILA), which imposed disclosure and other requirements on creditors.[21] In contrast to earlier consumer protection laws such as the Wheeler-Lea Act, TILA permits private enforcement by providing consumers with a private right of action, authorizing consumers to pursue claims for actual damages and statutory damages and allowing consumers who prevail in litigation to recover their attorney's fees and costs.[22]

Congress followed the enactment of TILA with several other consumer financial protection laws, many of which provided private rights of action for at least some statutory violations. For example, in 1970, Congress passed the Fair Credit Reporting Act (FCRA), which promotes the accuracy, fairness, and privacy of consumer information contained in the files of consumer reporting agencies, as well as providing consumers access to their own information.[23] In 1976, Congress passed ECOA to prohibit creditors from discriminating against applicants with respect to credit transactions.[24] In 1977, Congress passed the Fair Debt Collection Practices Act (FDCPA) to promote the fair treatment of consumers who are subject to debt collection activities.[25]

Also in the 1960s, States began passing their own consumer protection statutes modeled on the FTC Act to prohibit unfair and deceptive practices. Unlike the Federal FTC Act, however, these State statutes typically provide for private enforcement.[26] The FTC encouraged the adoption of consumer protection statutes at the State level and worked directly with the Council of State Governments to draft the Uniform Trade Practices Act and Consumer Protection Law, which served as a model for many State consumer protection statutes.[27] Currently, forty-nine of the fifty States and the District of Columbia have State consumer protection statutes modeled on the FTC Act that allow for private rights of action.[28]

Class Actions Pursuant to Federal Consumer Protection Laws

In 1966, shortly before Congress first began passing consumer financial protection statutes, the Federal Rules of Civil Procedure (Federal Rules or FRCP) were amended to make class actions substantially more available to litigants, including consumers. The class action procedure in the Federal Rules, as discussed in detail in Part II.B below, allows a representative individual to group his or her claims together with those of other, absent individuals in one lawsuit under certain circumstances. Because TILA and the other Federal consumer protection statutes discussed above permitted private rights of action, those private rights of action were enforceable through a class action, unless the statute expressly prohibited it.[29]

Congress calibrated enforcement through private class actions in several of the consumer protection statutes by specifically referencing class actions and adopting statutory damage schemes that are pegged to a percentage of the defendants' net worth.[30] For example, when consumers initially sought to bring TILA class actions, a number of courts applying Federal Rule 23 denied motions to certify the class because of the prospect of extremely large damages resulting from the aggregation of a large number of claims for statutory damages.[31] Congress addressed this by amending TILA in 1974 to cap class action damages in such cases to the lesser of 1 percent of the defendant's assets or $100,000.[32] Congress has twice increased the cap on class action damages in TILA: To $500,000 in 1976 and $1,000,000 in 2010.[33] Many other statutes similarly cap damages in class actions.[34] Further, the legislative history of other statutes indicates a particular intent to permit class actions given the

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terms (much as English common law assumed that civil actions generally involved roughly equal parties in direct contact with each other). J.R. Franke & D.A. Ballam, *New Applications of Consumer Protection Law: Judicial Activism or Legislative Directive?*, 32 Santa Clara L. Rev. 347, 351–55 (1992).

[18] Wheeler-Lea Act of 1938, Public Law 75–447, 52 Stat. 111 (1938).

[19] *See* FTC Act section 5. Prior to the Wheeler-Lea Act, the FTC had the authority to reach "unfair methods of competition in commerce" but only if they had an anticompetitive effect. *See FTC* v. *Raladam Co.*, 283 U.S. 643, 649 (1931).

[20] Public Law 90–321, 82 Stat. 146 (1968).

[21] *Id.* at Title I.

[22] 15 U.S.C. 1640(a).

[23] Public Law 91–508, 84 Stat. 1114–2 (1970).

[24] Public Law 94–239, 90 Stat. 251 (1976).

[25] Public Law 95–109, 91 Stat. 874 (1977). Other such Federal consumer protection laws include those enumerated in the Dodd-Frank Act and made subject to the Bureau's rulemaking, supervision, and enforcement authority: Alternative Mortgage Transaction Parity Act of 1982, 12 U.S.C. 3801; Consumer Leasing Act of 1976, 15 U.S.C. 1667; Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 (except with respect to § 920 of that Act); Fair Credit Billing Act, 15 U.S.C. 1666; Home Mortgage Disclosure Act of 1975, 12 U.S.C. 2801; Home Owners Protection Act of 1998, 12 U.S.C. 4901; Federal Deposit Insurance Act, 12 U.S.C. 1831t (b)–(f); Gramm-Leach-Bliley Act 15 U.S.C. 6802–09 (except with respect to section 505 as it applies to section 501(b) of that Act); Home Ownership and Equity Protection Act of 1994 (HOEPA), 15 U.S.C. 1601; Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701; Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. 2601; S.A.F.E. Mortgage Licensing Act of 2008, 12 U.S.C. 5101; Truth in Savings Act (TISA), 12 U.S.C. 4301, and section 626 of the Omnibus Appropriations Act of 2009, 15 U.S.C. 1638. Federal consumer protection laws also include the Bureau's authority to take action to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, and abusive acts or practices, Dodd-Frank section 1031, and its disclosure authority, Dodd-Frank section 1032.

[26] Victor E. Schwartz & Cary Silverman, *Common-Sense Construction of Consumer Protection Acts*, 54 U. Kan. L. Rev. 1, 15–16 (2005).

[27] *Id.*

[28] *Id.* at 16. Every State that adopted a version of FTC Act prohibits deception; some prohibit unfair practices as well. *See* Carolyn L. Carter, *Consumer Protection in the States*, Nat'l Consumer L. Ctr. (2009) at 5, *available at https://www.nclc.org/images/pdf/udap/report_50_states.pdf.*

[29] *See, e.g., Wilcox* v. *Commerce Bank of Kansas City*, 474 F.2d 336, 343–44 (10th Cir. 1973).

[30] A minority of Federal statutes provide private rights of action but do not cap damages in class action cases. For example, the Telephone Consumer Protection Act (47 U.S.C. 227(b)(3)), the FCRA (15 U.S.C. 1681n, 1681o), and the Credit Repair Organizations Act (15 U.S.C. 1679g) do not cap damages in class action cases.

[31] *See, e.g., Ratner* v. *Chem. Bank N.Y. Trust Co.*, 54 FRD. 412, 416 (S.D.N.Y. 1972).

[32] *See* Public Law 93–495, 88 Stat. 1518, section 408(a).

[33] Truth in Lending Act Amendments, Public Law 94–240, 90 Stat. 260 (1976); Dodd-Frank section 1416(a)(2).

[34] For example, ECOA provides for the full recovery of actual damages on a class basis and caps punitive damages to the lesser of $500,000 or 1 percent of a creditor's net worth; RESPA limits total class action damages (including actual or statutory damages) to the lesser of $1,000,000 or 1 percent of the net worth of a mortgage servicer; the FDCPA limits class action recoveries to the lesser of $500,000 or 1 percent of the net worth of the debt collector; and EFTA provides for a cap on statutory damages in class actions to the lesser of $500,000 or 1 percent of a defendant's net worth and lists factors to consider in determining the proper amount of a class award. *See* 15 U.S.C. 1691e(b) (ECOA), 12 U.S.C. 2605(f)(2) (RESPA), 15 U.S.C. 1692k(a)(2)(B) (FDCPA), and 15 U.S.C. 1693m(a)(2)(B) (EFTA).

potential for a small recovery in many consumer finance cases for individual damages.[35] Similarly, many States permit class action litigation to vindicate violations of their versions of the FTC Act.[36] A minority of States expressly prohibit class actions to enforce their FTC Acts. [37]

B. History and Purpose of the Class Action Procedure

The default rule in United States courts, inherited from England, is that only those who appear as parties to a given case are bound by its outcome.[38] As early as the medieval period, however, English courts recognized that litigating many individual cases regarding the same issue was inefficient for all parties and thus began to permit a single person in a single case to represent a group of people with common interests.[39] English courts later developed a procedure called the "bill of peace" to adjudicate disputes involving common questions and multiple parties in a single action. The process allowed for judgments binding all group members—whether or not they were participants in the suit—and contained most of the basic elements of what is now called class action litigation.[40]

The bill of peace was recognized in early United States case law and ultimately adopted by several State courts and the Federal courts.[41] Nevertheless, the use and impact of that procedure remained relatively limited through the nineteenth and into the twentieth centuries. In 1938, the Federal Rules were adopted to govern civil litigation in Federal court, and Rule 23 established a procedure for class actions.[42] That procedure's ability to bind absent class members was never clear, however.[43]

That changed in 1966, when Rule 23 was amended to create the class action mechanism that largely persists in the same form to this day.[44] Rule 23 was amended at least in part to promote efficiency in the courts and to provide for compensation of individuals when many are harmed by the same conduct.[45] The 1966 revisions to Rule 23 prompted similar changes in most States. As the Supreme Court has since explained, class actions promote efficiency in that "the . . . device saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23." [46] As to small harms, class actions provide a mechanism for compensating individuals where "the amounts at stake for individuals may be so small that separate suits would be impracticable." [47] Class actions have been brought not only by individuals, but also by companies, including financial institutions.[48]

Class Action Procedure Pursuant to Rule 23

A class action can be filed and maintained under Rule 23 in any case where there is a private right to bring a civil action, unless otherwise prohibited by law. Pursuant to Rule 23(a), a class action must meet all of the following requirements: (1) A class of a size such that joinder of each member as an individual litigant is impracticable; (2) questions of law or fact common to the class; (3) a class representative whose claims or defenses are typical of those of the class; and (4) that the class representative will adequately represent those interests.[49] The first two prerequisites—numerosity and commonality—focus on the absent or represented class, while the latter two tests—typicality and adequacy—address the desired qualifications of the class representative. Pursuant to Rule 23(b), a class action also must meet one of the following requirements: (1) Prosecution of separate actions risks either inconsistent adjudications that would establish incompatible standards of conduct for the defendant or would, as a practical matter, be dispositive of the interests of others; (2) defendants have acted or refused to act on grounds generally applicable to the class; or (3) common questions of law or fact predominate over any individual class member's questions, and a class action is superior to other methods of adjudication.

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[35] *See, e.g.,* Electronic Fund Transfer Act, H. Rept. No. 95–1315, at 15 (1978). The Report stated: "Without a class-action suit an institution could violate the title with respect to thousands of consumers without their knowledge, if its financial impact was small enough or hard to discover. Class action suits for damages are an essential part of enforcement of the bill because, all too often, although many consumers have been harmed, the actual damages in contrast to the legal costs to individuals are not enough to encourage a consumer to sue. Suits might only be brought for violations resulting in large individual losses while many small individual losses could quickly add up to thousands of dollars."

[36] The laws of at least 14 States expressly permit class action lawsuits. *See, e.g.,* Cal. Bus. & Professions Code 17203 (2016); Haw. Rev. Stat. Ann. sec. 480–13.3 (2015); Idaho Code Ann. sec. 48–608(1) (2015); Ind. Code Ann. sec. 24–5–0.5–4(b) (2015); Kan. Stat. Ann. sec. 50–634(c) and (d) (2012); Mass. Gen. Laws ch. 93A, sec. 9(2) (2016); Mich. Comp. Laws sec. 445.911(3) (2015); Mo. Rev. Stat. sec. 407.025(2) and (3) (2015); N.H. Rev. Stat. sec. 358–A:10-a (2015); N.M. Stat. sec. 57–12–10(E) (2015); Ohio Rev. Code sec. 1345.09(B) (2016); R.I. Gen. Laws sec. 6–13.1–5.2(b) (2015); Utah Code sec. 13–11–19 and 20 (2015); Wyo. Stat. sec. 40–12–108(b) (2015).

[37] *See, e.g.,* Ala. Code sec. 8–19–10(f) (2002); Ga. Code Ann. sec. 10–1–399 (2015); La. Rev. Stat. Ann. sec. 51:1409(A) (2006); Mont. Code Ann. sec. 30–14–133(1) (2003); S.C. Code Ann. sec. 37–5–202(1) (1999).

[38] *Ortiz* v. *Fibreboard Corp.,* 527 U.S. 815, 832–33 (1999).

[39] For instance, in early English cases, a local priest might represent his parish, or a guild might be represented by its formal leadership. Samuel Issacharoff, *Assembling Class Actions,* 90 Wash U. L. Rev. 699, 704 (2014) (citing Stephen C. Yeazell, From Medieval Group Litigation to the Modern Class Action 40 (1987)).

[40] Wright, Miller & Kane, 7A Fed. Prac. & Proc. Civ. 1751 (3d. ed.).

[41] *Id.* Federal Equity Rule 48, in effect from 1842 to 1912, officially recognized representative suits where parties were too numerous to be conveniently brought before the court, but did not bind absent members to the judgment. *Id.* In 1912, Federal Equity Rule 38 replaced Rule 48 and allowed absent members to be bound by a final judgment. *Id.*

[42] *See* Fed. R. Civ. P. 23 (1938).

[43] *See American Pipe & Constr. Co.* v. *Utah,* 414 U.S. 538, 545–46 (1974) ("The Rule [prior to its amendment] . . . contained no mechanism for determining at any point in advance of final judgment which of those potential members of the class claimed in the complaint were actual members and would be bound by the judgment.").

[44] *See, e.g.,* Robert H. Klonoff, *The Decline of Class Actions,* 90 Wash. U. L. Rev. 729, 746–47 (2013) ("The Rule 23(a) and (b) criteria, by their terms, have not changed in any significant way since 1966, but some courts have become increasingly skeptical in reviewing whether a particular case satisfies those requirements").

[45] *See American Pipe,* 414 U.S. at 553 ("A contrary rule allowing participation only by those potential members of the class who had earlier filed motions to intervene in the suit would deprive Rule 23 class actions of the efficiency and economy of litigation which is a principal purpose of the procedure.").

[46] *Califano* v. *Yamasaki,* 442 U.S. 682, 701 (1979).

[47] *Amchem Prod., Inc.* v. *Windsor,* 521 U.S. 591, 616 (1997), *citing* Fed. R. Civ. P. 23 advisory committee's note, 28 U.S.C. app. at 698 (stating that a class action may be justified under Rule 23 where "the class may have a high degree of cohesion and prosecution of the action through representatives would be quite unobjectionable, or the amounts at stake for individuals may be so small that separate suits would be impracticable"). *See also id.* at 617 (citing *Mace* v. *Van Ru Credit Corp.,* 109 F.3d 338, 344 (7th Cir. 1997) ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her own rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.").

[48] *See, e.g.,* Financial Institution Plaintiffs' Consol. Class Action Compl. at 1, 5, *In re: The Home Depot, Inc. Customer Data Breach Litig.,* MDL No. 14–02583 (N.D. Ga. May 27, 2015), Dkt. No. 104 (complaint filed on behalf of putative class of "similarly situated banks, credit unions, and other financial institutions" that had "issued and owned payment cards compromised by the Home Depot data breach"); Mem. & Order at 2, 14, *In re: Target Corp. Customer Data Security Breach Litig.,* MDL No. 14–2522 (D. Minn. Sept. 15, 2015), Dkt No. 589 (granting certification to plaintiff class made up of banks, credit unions, and other financial institutions that had "issued payment cards such as credit and debit cards to consumers who, in turn, used those cards at Target stores during the period of the 2013 data breach," noting that "given the number of financial institutions involved and the similarity of all class members' claims, Plaintiffs have established that the class action device is the superior method for resolving this dispute"); *In re TJX Cos. Retail Security Breach Litig.,* 246 FRD. 389 (D. Mass. 2007) (denying class certification in putative class action by financial institutions).

[49] Fed. R. Civ. P. 23(a)(1) through (4).

These and other requirements of Rule 23 are designed to ensure that class action lawsuits safeguard absent class members' due process rights because they may be bound by what happens in the case.[50] Further, the courts may protect the interests of absent class members through the exercise of their substantial supervisory authority over the quality of representation and specific aspects of the litigation. In the typical Federal class action, an individual plaintiff (or sometimes several individual plaintiffs), represented by an attorney, files a lawsuit on behalf of that individual and others similarly situated against a defendant or defendants.[51] Those similarly situated individuals may be a small group (as few as 40 or even less) or as many as millions that are alleged to have suffered the same injury as the individual plaintiff. That individual plaintiff, typically referred to as a named or lead plaintiff, cannot properly proceed with a class action unless the court certifies that the case meets the requirements of Rule 23, including the requirements of Rule 23(a) and (b) discussed above. If the court does certify that the case can go forward as a class action, potential class members who do not opt out of the class are bound by the eventual outcome of the case.[52] If not certified, the case proceeds only to bind the named plaintiff.

A certified class case proceeds similarly to an individual case, except that the court has an additional responsibility in a class case, pursuant to Rule 23 and the relevant case law, to actively supervise classes and class proceedings and to ensure that the lead plaintiff keeps absent class members informed.[53] Among its tasks, a court must review any attempts to settle or voluntarily dismiss the case on behalf of the class,[54] may reject any settlement agreement if it is not "fair, reasonable and adequate," [55] and must ensure that the payment of attorney's fees is "reasonable." [56] The court also addresses objections from class members who seek a different outcome to the case (*e.g.*, lower attorney's fees or a better settlement). These requirements are designed to ensure that all parties to class litigation have their rights protected, including defendants and absent class members.

Developments in Class Action Procedure Over Time

Since the 1966 amendments, Rule 23 has generated a significant body of case law as well as significant controversy.[57] In response, Congress and the Advisory Committee on the Federal Rules of Civil Procedure (which has been delegated the authority to change Rule 23 under the Rules Enabling Act) have made a series of targeted changes to Rule 23 to calibrate the equities of class plaintiffs and defendants. Meanwhile, the courts have also addressed concerns about Rule 23 in the course of interpreting the rule and determining its application in the context of particular types of cases.

For example, Congress passed the Private Securities Litigation Reform Act (PSLRA) in 1995. Enacted partially in response to concerns about the costs to defendants of litigating class actions, the PSLRA reduced discovery burdens in the early stages of securities class actions.[58] In 2005, Congress again adjusted the class action rules when it adopted the Class Action Fairness Act (CAFA) in response to concerns about abuses of class action procedure in some State courts.[59] Among other things, CAFA expanded the subject matter jurisdiction of Federal courts to allow them to adjudicate most large class actions.[60] The Advisory Committee also periodically reviews and updates Rule 23. In 1998, the Advisory Committee amended Rule 23 to permit interlocutory appeals of class certification decisions, given the unique importance of the certification decision, which can dramatically change the dynamics of a class action case.[61] In 2003, the Advisory Committee amended Rule 23 to require courts to define classes that they are certifying, increase the amount of scrutiny that courts must apply to class settlement proposals, and impose additional requirements on class counsel.[62] In 2015, the Advisory Committee further identified several issues that "warrant serious examination" and presented "conceptual sketches" of possible further amendments.[63]

Federal courts have also shaped class action practice through their interpretations of Rule 23. In the last five years, the Supreme Court has decided several major cases refining class action procedure. In *Wal-Mart Stores, Inc.* v. *Dukes*, the Court interpreted the commonality requirement of Rule 23(a)(2) to require that the common question that is the basis for certification be central to the disposition of the case.[64] In *Comcast Corp.* v. *Behrend*, the Court reaffirmed that district courts must undertake a "rigorous analysis" of whether a putative class satisfies the predominance requirements in Rule 23(b)(3) and reinforced that individual damages issues may foreclose class certification altogether.[65] In *Campbell-Ewald Co.* v. *Gomez*, decided this term, the Court held that a defendant cannot moot a class action by offering complete relief to an individual plaintiff before class certification (unless the individual plaintiff agrees to accept that relief).[66] In *Tyson Foods, Inc.* v. *Bouaphakeo*, the Court held that statistical techniques presuming that all class members are identical to the average observed in a sample can be used to establish classwide liability where each class member could have relied on that sample to establish liability had each brought an individual action.[67] Finally, in a case not yet decided as of the date of this proposal with implications for certain types of class actions, *Spokeo, Inc.* v. *Robins,* the Court is considering whether a plaintiff has standing to sue if they allege a violation of a Federal statute that allows for statutory damages—in this case, FCRA—and claim only those damages without making a claim for actual damages.[68]

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[50] *See, e.g., Amchem Prod., Inc.*, 521 U.S. at 619–21.

[51] Rule 23 also permits a class of defendants.

[52] In some circumstances, absent class members are not given an opportunity to opt out. *E.g.*, Fed. R. Civ. P. 23(b)(1)(B) (providing for "limited fund" class actions when claims are made by numerous persons against a fund insufficient to satisfy all claims); Fed. R. Civ. P. 23(b)(2) (providing for class actions in which the plaintiffs are seeking primarily injunctive or corresponding declaratory relief).

[53] Fed. R. Civ. P. 23(g).

[54] *See, e.g.*, Fed. R. Civ. P. 23(e) ("The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval."). This does not apply to settlements with named plaintiffs reached prior to the certification of a class.

[55] Fed. R. Civ. P. 23(e)(2).

[56] Fed. R. Civ. P. 23(h).

[57] *See, e.g.*, David Marcus, *The History of the Modern Class Action, Part I: Sturm und Drang, 1953–1980*, 90 Wash. U. L. Rev. 587, 610 (participants in the debate "quickly exhausted virtually every claim for and against an invigorated Rule 23").

[58] Private Securities Litigation Reform Act of 1995, Public Law 104–67, 109 Stat. 737 (1995).

[59] Class Action Fairness Act of 2005, Public Law 109–2, 119 Stat. 4 (2005).

[60] 28 U.S.C. 1332(d), 1453, and 1711–15.

[61] Fed. R. Civ. P. 23(f). *See also* Newberg on Class Actions § 7:41; Committee Notes on Rules, 1998 Amendment ("This permissive interlocutory appeal provision is adopted under the power conferred by 28 U.S.C. 1292(e). Appeal from an order granting or denying class certification is permitted in the sole discretion of the court of appeals. No other type of Rule 23 order is covered by this provision."). *See* 28 U.S.C. app. at 163 (2014).

[62] Fed. R. Civ. P. 23(c)(2)(B). *See also* 28 U.S.C. app. at 168 (2014) ("Rule 23(c)(2)(B) is revised to require that the notice of class certification define the certified class in terms identical to the terms used in (c)(1)(B).").

[63] *See, e.g.*, Rule 23 Subcomm. Rept., *in* Adv. Comm. on Civil Rules Agenda Book for April 9–10, 2015 at 243–97, *available at http://www.uscourts.gov/rules-policies/archives/agenda-books/advisory-committee-rules-civil-procedure-april-2015.*

[64] 564 U.S. 338, 131 S. Ct. 2541 (2011); *see also* Klonoff, *supra* note 44, at 775.

[65] 133 S. Ct. 1426 (2013).

[66] *Campbell-Ewald Co.* v. *Gomez*, 136 S. Ct. 1036, 1046–48 (Jan. 20, 2016).

C. Arbitration and Arbitration Agreements

As described above at the beginning of Part II, arbitration is a dispute resolution process in which the parties choose one or more neutral third parties to make a final and binding decision resolving the dispute.[69] The typical arbitration agreement provides that the parties shall submit any disputes that may arise between them to arbitration. Arbitration agreements generally give each party to the contract two distinct rights. First, either side can file claims against the other in arbitration and obtain a decision from the arbitrator.[70] Second, with some exceptions, either side can use the arbitration agreement to require that a dispute proceed in arbitration instead of court.[71] The typical agreement also specifies an organization called an arbitration administrator. Administrators, which may be for-profit or non-profit organizations, facilitate the selection of an arbitrator to decide the dispute, provide for basic rules of procedure and operations support, and generally administer the arbitration.[72] Parties usually have very limited rights to appeal from a decision in arbitration to a court.[73] Most arbitration also provides for limited or streamlined discovery procedures as compared to those in many court proceedings.[74]

History of Arbitration

The use of arbitration to resolve disputes between parties is not new.[75] In England, the historical roots of arbitration date to the medieval period, when merchants adopted specialized rules to resolve disputes between them.[76] English merchants began utilizing arbitration in large numbers during the nineteenth century.[77] However, English courts were hostile towards arbitration, limiting its use through doctrines that rendered certain types of arbitration agreements unenforceable.[78] Arbitration in the United States in the eighteenth and nineteenth centuries reflected both traditions: it was used primarily by merchants, and courts were hostile toward it.[79] Through the early 1920s, U.S. courts often refused to enforce arbitration agreements and awards.[80]

In 1920, New York enacted the first modern arbitration statute in the United States, which strictly limited courts' power to undermine arbitration decisions and arbitration agreements.[81] Under that law, if one party to an arbitration agreement refused to proceed to arbitration, the statute permitted the other party to seek a remedy in State court to enforce the arbitration agreement.[82] In 1925, Congress passed the United States Arbitration Act, which was based on the New York arbitration law and later became known as the Federal Arbitration Act (FAA).[83] The FAA remains in force today. Among other things, the FAA makes agreements to arbitrate "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[84]

Expansion of Consumer Arbitration and Arbitration Agreements

From the passage of the FAA through the 1970s, arbitration continued to be used in commercial disputes between companies.[85] Beginning in the 1980s, however, companies began to use arbitration agreements in contracts with consumers, investors, employees, and franchisees that were not negotiated.[86] By the 1990s, some financial services providers began including arbitration agreements in their form consumer agreements.[87]

One notable feature of these agreements it that they could be used to block class action litigation and often class arbitration as well.[88] The

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[67] *Tyson Foods, Inc.* v. *Bouaphakeo,* 136 S. Ct. 663, 670 (Mar. 22, 2016).

[68] *Spokeo Inc.* v. *Robins,* 135 S. Ct. 1892 (2015) (noting that the question before the court is "[w]hether Congress may confer Article III standing upon a plaintiff who suffers no concrete harm, and who therefore could not otherwise invoke the jurisdiction of a Federal court, by authorizing a private right of action based on a bare violation of a Federal statute").

[69] *See supra* note 6.

[70] *Id.*

[71] As described in the Study, however, most arbitration agreements in consumer financial contracts contain a "small claims court carve-out" that provides the parties with a contractual right to pursue a claim in small claims court. Study, *supra* note 2, section 2 at 33–34.

[72] *See id.*, section 2 at 34.

[73] *See* 9 U.S.C. 9. *See also Hall Street Assocs., L.L.C.* v. *Mattel, Inc.*, 552 U.S. 576, 584 (2008) (holding that parties cannot expand the grounds for vacating arbitration awards in Federal court by contract); Preliminary Results, supra note 2 at 6, n.4.

[74] *See* Study, *supra* note 2, section 4 at 16–17.

[75] The use of arbitration appears to date back at least as far as the Roman Empire. *See, e.g.*, Amy J. Schmitz, *Ending a Mud Bowl: Defining Arbitration's Finality Through Functional Analysis,* 37 Ga. L. Rev. 123, 134–36 (2002); Derek Roebuck, Roman Arbitration (2004).

[76] *See, e.g.*, Jeffrey W. Stempel, *Pitfalls of Public Policy: The Case of Arbitration Agreements,* 22 St. Mary's L.J. 259, 269–70 (1990).

[77] *Id.*

[78] *See, e.g.*, Schmitz, *supra* note 75, at 137–39.

[79] *See, e.g.*, Stempel, *supra* note 76 at 273–74.

[80] David S. Clancy & Matthew M.K. Stein, *An Uninvited Guest: Class Arbitration and the Federal Arbitration Act's Legislative History,* 63 Bus. Law. 55, 58 & n.11 (2007) (citing, *inter alia, Haskell* v. *McClintic-Marshall Co.*, 289 F. 405, 409 (9th Cir. 1923) (refusing to enforce arbitration agreement because of a "settled rule of the common law that a general agreement to submit to arbitration did not oust the courts of jurisdiction, and that rule has been consistently adhered to by the federal courts"); *Dickson Manufacturing Co.* v. *Am. Locomotive Co.*, 119 F. 488, 490 (C.C.M.D. Pa. 1902) (refusing to enforce an arbitration agreement where plaintiff revoked its consent to arbitration).

[81] 43 N.Y. Stat. 833 (1925).

[82] *Id.*

[83] 9 U.S.C. 1, *et seq.* The FAA was codified in 1947. Public Law 282, 61 Stat. 669 (July 30, 1947). James E. Berger & Charlene Sun, *The Evolution of Judicial Review Under the Federal Arbitration Act,* 5 N.Y.U. J. Law & Bus. 745, 754 n.45 (2009).

[84] 9 U.S.C. 2.

[85] *See, e.g.*, Soia Mentschikoff, *Commercial Arbitration,* 61 Colum. L. Rev. 846, 850 (1961) (noting that, as of 1950, nearly one-third of trade associations used a mechanism like the American Arbitration Association as a means of dispute resolution between trade association members, and that over one-third of other trade associations saw members make their own individual arrangements for arbitrations); *see also id.* at 858 (noting that AAA heard about 240 commercial arbitrations a year from 1947 to 1950, comparable to the volume of like cases before the U.S. District Court of the Southern District of New York in the same time period). Arbitration was also used in the labor context where unions had bargained with employers to create specialized dispute resolution mechanisms pursuant to the Labor Management Relations Act. 29 U.S.C. 401–531.

[86] Stephen J. Ware, *Arbitration Clauses, Jury-Waiver Clauses and Other Contractual Waivers of Constitutional Rights,* 67 Law & Contemp. Problems 179 (2004).

[87] Sallie Hofmeister, *Bank of America is Upheld on Consumer Arbitration,* N.Y. Times, Aug. 20, 1994 ("'The class action cases is where the real money will be saved [by arbitration agreements],' Peter Magnani, a spokesman for the bank, said."); John P. Roberts, *Mandatory Arbitration by Financial Institutions,* 50 Cons. Fin. L.Q. Rep. 365, 367 (1996) (identifying an anonymous bank "ABC" as having adopted arbitration provisions in its contracts for consumer credit cards, deposit accounts, and safety deposit boxes); Hossam M. Fahmy, *Arbitration: Wiping Out Consumers Rights?*, 64 Tex. B.J. 917, 917 (2001) (citing Barry Meier, *In Fine Print, Customers Lose Ability to Sue,* N.Y. Times, Mar. 10, 1997, at A1 (noting in 2001 that "[t]he use of consumer arbitration expanded eight years ago when Bank of America initiated its current policy," when "notices of the new arbitration requirements were sent along with monthly statements to 12 million customers, encouraging thousands of other companies to follow the same policy").

[88] *See, e.g.*, Alan S. Kaplinsky & Mark J. Levin, *Excuse Me, But Who's the Predator? Banks Can Use Arbitration Clauses as a Defense,* 7 Bus. L. Today 24 (1998) ("Lenders that have not yet implemented arbitration programs should promptly consider doing so, since each day that passes brings with it

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agreements could block class actions filed in court because, when sued in a class action, companies could use the arbitration agreement to dismiss or stay the class action in favor of arbitration. Yet the agreements often prohibited class arbitration as well, rendering plaintiffs unable to pursue class claims in either litigation or arbitration.[89] More recently, some consumer financial providers themselves have disclosed in their filings with the SEC that they rely on arbitration agreements for the express purpose of shielding themselves from class action liability.[90]

Since the early 1990s, the use of arbitration agreements in consumer financial contracts has become widespread, as shown by Section 2 of the Study (which is discussed in detail in Part III.D below). By the early 2000s, a few consumer financial companies had become heavy users of arbitration proceedings to obtain debt collection judgments against consumers. For example, in 2006 alone, the National Arbitration Forum (NAF) administered 214,000 arbitrations, most of which were consumer debt collection proceedings brought by companies.[91]

Legal Challenges to Arbitration Agreements

The increase in the prevalence of arbitration agreements coincided with various legal challenges to their use in consumer contracts. One set of challenges focused on the use of arbitration agreements in connection with debt collection disputes. In the late 2000s, consumer groups began to criticize the fairness of debt collection arbitration proceedings administered by the NAF, the most widely used arbitration administrator for debt collection.[92] In 2008, the San Francisco City Attorney's office filed a civil action against NAF alleging that NAF was biased in favor of debt collectors.[93] In 2009, the Minnesota Attorney General sued NAF, alleging an institutional conflict of interest because a group of investors with a 40 percent ownership stake in an affiliate of NAF also had a majority ownership stake in a debt collection firm that brought a number of cases before NAF.[94] A few days after the filing of the lawsuit, NAF reached a settlement with the Minnesota Attorney General pursuant to which it agreed to stop administering consumer arbitrations completely, although NAF did not admit liability.[95] Further, a series of class actions filed against NAF were consolidated in a multidistrict litigation and NAF settled those in 2011 by agreeing to suspend $1 billion in pending debt collection arbitrations.[96] The American Arbitration Association (AAA) likewise announced a moratorium on administering company-filed debt collection arbitrations, articulating significant concerns about due process and fairness to consumers subject to such arbitrations.[97]

A second group of challenges asserted that the invocation of arbitration agreements to block class actions was unlawful. Because the FAA permits challenges to the validity of arbitration agreements on grounds that exist at law or in equity for the revocation of any contract,[98] challengers argued that provisions prohibiting arbitration from proceeding on a class basis—as well as other features of particular arbitration agreements—were unconscionable under State law or otherwise unenforceable.[99] Initially, these challenges yielded conflicting results. Some courts held that class arbitration waivers were not unconscionable.[100] Other courts held that such waivers were unenforceable on unconscionability grounds.[101] Some of

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the risk of additional multimillion-dollar class action lawsuits that might have been avoided had arbitration procedures been in place."); *see also* Bennet S. Koren, *Our Mini Theme: Class Actions*, 7 Bus. L. Today 18 (1998) (industry attorney recommends adopting arbitration agreements because "[t]he absence of a class remedy ensures that there will be no formal notification and most claims will therefore remain unasserted.").

[89] Even if a pre-dispute arbitration agreement does not prohibit class arbitration, an arbitrator may not permit arbitration to go forward on a class basis unless the arbitration agreement itself shows the parties agreed to do so. *See Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.*, 559 U.S. 662, 684 (2010) ("[A] party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so.") (emphasis in original). Both the AAA and JAMS class arbitration procedures reflect the law; both require an initial determination as to whether the arbitration agreement at issue provides for class arbitration before a putative class arbitration can move forward. *See* AAA, Supplementary Rules for Class Arbitrations, Rule 3 (effective Oct. 8, 2003) ("Upon appointment, the arbitrator shall determine as a threshold matter, in a reasoned, partial final award on the construction of the arbitration clause, whether the applicable arbitration clause permits the arbitration to proceed on behalf of or against a class (the "Clause Construction Award."); JAMS Class Action Procedures, Rule 2: Construction of the Arbitration Clause (effective May 1, 2009) ("[O]nce appointed, the Arbitrator, following the law applicable to the validity of the arbitration clause as a whole, or the validity of any of its terms, or any court order applicable to the matter, shall determine as a threshold matter whether the arbitration can proceed on behalf of or against a class.").

[90] *See, e.g.*, Discover Financial Services, Annual Report (Form 10–K) (Feb. 25, 2015) at 43 ("[W]e have historically relied on our arbitration clause in agreements with customers to limit our exposure to consumer class action litigation . . ."); Synchrony Financial, Annual Report (Form 10–K) (Feb. 23, 2015) at 45 ("[H]istorically the arbitration provision in our customer agreements generally has limited our exposure to consumer class action litigation . . . .").

[91] Carrick Mollenkamp, et al., *Turmoil in Arbitration Empire Upends Credit-Card Disputes*, Wall St. J., Oct. 16, 2009. *See also* Public Citizen, *The Arbitration Trap: How Credit Card Companies Ensnare Consumers* (2007), *available at http://www.citizen.org/publications/publicationredirect.cfm?ID=7545*.

[92] *See* Mollencamp, *supra* note 91. In addition to cases relating to debt collection arbitrations, NAF was later added as a defendant to the *Ross* v. *Bank of America* case, a putative class action pertaining to non-disclosure of foreign currency conversion fees; NAF was alleged to have facilitated an antitrust conspiracy among credit card companies to adopt arbitration agreements. NAF settled those allegations. *See* Order Preliminarily Approving Class Action Settlement as to Defendant National Arbitration Forum Inc., *In re Currency Conversion Fee Antitrust Litig.*, MDL 1409 (S.D.N.Y. Dec. 13, 2011).

[93] *California* v. *National Arbitration Forum, Inc.*, No. 473–569 (S.F. Sup. Ct. Mar. 2009).

[94] *See* Complaint at 2, *State of Minnesota* v. *National Arbitration Forum, Inc.* No. 27–cv–0918550 (4th Jud. Dist. Minn. July 14, 2009), *available at https://www.nclc.org/images/pdf/unreported/naf_complaint.pdf*.

[95] Press Release, State of Minnesota, Office of the Attorney General, *National Arbitration Forum Barred from Credit Card and Consumer Arbitrations Under Agreement with Attorney General Swanson* (July 19, 2009), *available at http://pubcit.typepad.com/files/nafconsentdecree.pdf*. NAF settled the City of San Francisco's claims in 2011 by agreeing to cease administering consumer arbitrations in California in perpetuity and to pay a $1 million penalty. News Release, City Attorney Dennis Herrera, *Herrera Secures $5 Million Settlement, Consumer Safeguards Against BofA Credit Card Subsidiary* (Aug. 22, 2011).

[96] Mem. and Order, *In re National Arbitration Forum Trade Practices Litigation*, No. 10-md-02122 (D. Minn. Aug. 8, 2011).

[97] *See* AAA Press Release, *The American Arbitration Association Calls for Reform of Debt Collection Arbitration* (July 23, 2009), *available at https://www.nclc.org/images/pdf/arbitration/testimonysept09-exhibit3.pdf. See also* American Arbitration Association, *Consumer Debt Collection Due Process Protocol Statement of Principles* (2010), *available at https://www.adr.org/aaa/ShowProperty?nodeId=%2FUCM%2FADRSTG_003865*. JAMS has reported to the Bureau that it only handles a small number of debt collection claims and often those arbitrations are initiated by consumers.

[98] 9 U.S.C. 2 (providing that agreements to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.").

[99] *See, e.g.*, Opening Br. on the Merits, *Discover Bank* v. *Superior Court*, No. S113725, 2003 WL 26111906, at 5 (Cal. 2005) ("[A] ban on class actions in an adhesive consumer contract such as the one at issue here is unconscionable because it is one-sided and effectively non-mutual—that is, it benefits only the corporate defendant, and could never operate to the benefit of the consumer.")

[100] *See, e.g.*, *Strand* v. *U.S. Bank N.A.*, 693 NW.2d 918 (N.D. 2005); *Edelist* v. *MBNA America Bank*, 790 A.2d 1249 (Sup. Ct. of Del., New Castle Cty. 2001).

[101] *See, e.g.*, *Brewer* v. *Missouri Title Loans, Inc.*, 323 SW.3d 18 (Mo. 2010) (en banc); *Feeney* v. *Dell, Inc.*, 908 NE.2d 753 (Mass. 2009); *Fiser* v. *Dell Computer Corp.*, 188 P.3d 1215 (N.M. 2008); *Tillman* v. *Commercial Credit Loans, Inc.*, 655 SE.2d 362 (N.C. 2008); *Dale* v. *Comcast Corp.*, 498 F.3d 1216 (11th Cir. 2007) (holding that class action ban in arbitration agreement substantively unconscionable under Georgia law); *Scott* v. *Cingular Wireless*, 161 P.3d 1000 (Wash. 2007) (en banc); *Kinkel* v. *Cingular Wireless LLC*, 857 NE.2d 250 (Ill. 2006); *Muhammad* v. *Cnty. Bank of*

these decisions also held that the FAA did not preempt application of a state's unconscionability doctrine.[102]

Before 2011, courts were divided on whether arbitration agreements that bar class proceedings were unenforceable because they violated some states' laws. Then, in 2011, the Supreme Court held in *AT&T Mobility* v. *Concepcion* that the FAA preempted application of California's unconscionability doctrine to the extent it would have precluded enforcement of a consumer arbitration agreement with a provision prohibiting the filing of arbitration on a class basis. The Court concluded that any State law—even one that serves as a general contract law defense—that "[r]equir[es] the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA." [103] The Court reasoned that class arbitration eliminates the principal advantage of arbitration—its informality—and increases risks to defendants (due to the high stakes of mass resolution combined with the absence of multilayered review).[104] As a result of the Court's holding, parties to litigation could no longer prevent the use of an arbitration agreement to block a class action in court on the ground that a prohibition on class arbitration in the agreement was unconscionable under the relevant State law.[105] The Court further held, in a 2013 decision, that a court may not use the "effective vindication" doctrine—under which a court may invalidate an arbitration agreement that operates to waive a party's right to pursue statutory remedies—to invalidate a class arbitration waiver on the grounds that the plaintiff's cost of individually arbitrating the claim exceeds the potential recovery.[106]

Regulatory and Legislative Activity

As arbitration agreements in consumer contracts became more common, Federal regulators, Congress, and State legislatures began to take notice of their impact on the ability of consumers to resolve disputes. One of the first entities to regulate arbitration agreements was the National Association of Securities Dealers—now known as the Financial Industry Regulatory Authority (FINRA)—the self-regulating body for the securities industry that also administers arbitrations between member companies and their customers.[107] Under FINRA's Code of Arbitration for customer disputes, FINRA members have been prohibited since 1992 from enforcing an arbitration agreement against any member of a certified or putative class unless and until the class treatment is denied (or a certified class is decertified) or the class member has opted out of the class or class relief.[108] FINRA's code also requires this limitation to be set out in any member company's arbitration agreement. The SEC approved this rule in 1992.[109] In addition, since 1976, the regulations of the Commodities Futures Trading Commission (CFTC) implementing the Commodity Exchange Act have required that arbitration agreements in commodities contracts be voluntary.[110] In 2004, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)—government-sponsored enterprises that purchase a large share of mortgages—ceased purchasing mortgages that contained arbitration agreements.[111]

Since 1975, FTC regulations implementing the Magnuson-Moss Warranty Act (MMWA) have barred the use, in consumer warranty agreements, of arbitration agreements that would result in binding decisions.[112] Some courts in the late 1990s disagreed with the FTC's interpretation, but the FTC promulgated a final rule in 2015 that "reaffirm[ed] its long-held view" that the MMWA "disfavors, and authorizes the Commission to prohibit, mandatory binding arbitration in warranties." [113] In doing so, the FTC noted that the language of the MMWA presupposed that the kinds of informal dispute settlement mechanisms the FTC would permit would not foreclose the filing of a civil action in court.[114]

More recently, the Centers for Medicare and Medicaid Services (CMS) proposed a rule that would revise the requirements that long-term health care facilities must meet to participate in the Medicare and Medicaid programs.[115] Among the new proposed rules are a number of requirements for any arbitration agreements between long-term care facilities and residents of those facilities, including that there be a stand-alone agreement signed by the resident; that care at the facility not be conditioned on signing the agreement; and that the agreement be clear in form, manner and language as to what arbitration is and that the resident is waiving a right to judicial relief and that arbitration be conducted by a neutral arbitrator in a location that is

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Rehoboth Beach, Del., 912 A.2d 88 (N.J. 2006); *Discover Bank* v. *Superior Court*, 113 P.3d 1100 (Cal. 2005).

[102] *See, e.g., Feeney*, 908 NE.2d at 767–69; *Scott*, 161 P.3d at 1008–09; *Discover Bank*, 113 P.3d at 1110–17.

[103] *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 344 (2011).

[104] *Id.* at 348–51.

[105] *See* Robert Buchanan Jr., *The U.S. Supreme Court's Landmark Decision in AT&T Mobility* v. *Concepcion: One Year Later*, Bloomberg Law, May 8, 2012, *available at http://www.bna.com/att-v-concepcion-one-year-later/* (noting that 45 out of 61 cases involving a class waiver in an arbitration agreement were sent to arbitration). The Court did not preempt all State law contract defenses under all circumstances; rather, these doctrines remain available provided that they are not applied in a manner that disfavors arbitration.

[106] *American Express Co.* v. *Italian Colors Restaurant*, 133 S. Ct. 2304, 2309 (2013).

[107] *See* FINRA Arbitration and Mediation, *https://www.finra.org/arbitration-and-mediation*.

[108] FINRA Code of Arbitration Procedure for Customer Disputes 12204(d). For individual disputes between brokers and customers, FINRA requires individual arbitration.

[109] *See* SE.C., Order Approving Proposed Rule Change Relating to the Exclusion of Class Actions From Arbitration Proceedings, 57 FR 52659–52661 (Nov. 4, 1992) (citing Securities and Exchange Act, section 19(b)(1) and Rule 19b–4). In a separate context, the SEC has opposed attempts by companies to include arbitration agreements in their securities filings in order to force shareholders to arbitrate disputes rather than litigate them in court. *See, e.g.,* Carl Schneider, *Arbitration Provisions in Corporate Governance Documents*, Harv. L. Sch. Forum on Corp. Governance and Fin. Reg. (Apr. 27, 2012), *available at https://corpgov.law.harvard.edu/2012/04/27/arbitration-provisions-in-corporate-governance-documents/* ("According to published reports, the SEC advised Carlyle that it would not grant an acceleration order permitting the registration statement to become effective unless the arbitration provision was withdrawn."). Carlyle subsequently withdrew its arbitration provision.

[110] Arbitration or Other Dispute Settlement Procedures, 41 FR 42942, 42946 (Sept. 29, 1976); 17 CFR 166.5(b).

[111] *See* Kenneth Harney, *Fannie Follows Freddie in Banning Mandatory Arbitration*, Wash. Post., Oct. 9, 2004, *available at http://www.washingtonpost.com/wp-dyn/articles/A18052-2004Oct8.html*.

[112] 10 CFR 703.5(j). The FTC's rules do permit warranties that require consumers to resort to an informal dispute resolution mechanism before proceeding in a court, but decisions from such informal proceedings are not binding and may be challenged in court. (By contrast, most arbitration awards are binding and may only be challenged on very limited grounds as provided by the FAA.) The FTC's rulemaking was based on authority expressly delegated by Congress in its passage of the MMWA pertaining to informal dispute settlement procedures. 15 U.S.C. 2310(a)(2). Until 1999, courts upheld the validity of the rule. *See* 80 FR 42719; *see also* Jonathan D. Grossberg, *The Magnuson-Moss Warranty Act, the Federal Arbitration Act, and the Future of Consumer Protection*, 93 Cornell L. Rev. 659, 667 (2008). After 1999, two appellate courts questioned whether the MMWA was intended to reach arbitration agreements. *See* Final Action Concerning Review of the Interpretations of Magnuson-Moss Warranty Act, 80 FR 42710, 42719 & nn.115–116 (July 20, 2015) (citing *Davis* v. *Southern Energy Homes, Inc.*, 305 F.3d 1268 (11th Cir. 2002); *Walton* v. *Rose Mobile Homes, LLC*, 298 F.3d 470 (5th Cir. 2002)).

[113] *See* FTC Final Action Concerning Review of the Interpretations of Magnuson-Moss Warranty Act, 80 FR 42710, 42719 (July 20, 2015).

[114] *See id.*

[115] Centers for Medicare & Medicaid Services, Medicare and Medicaid Programs, Reform of Requirements for Long-Term Care Facilities, 80 FR 42168 (July 16, 2015).

convenient to both parties.[116] Finally, the Department of Education recently announced that it is proposing options in the context of a negotiated rulemaking to limit the impact of arbitration agreements in certain college enrollment agreements, specifically by addressing the use of arbitration agreements to bar students from bringing group claims.[117]

Congress has also taken several steps to address the use of arbitration agreements in different contexts. In 2002, Congress amended Federal law to require that, whenever a motor vehicle franchise contract contains an arbitration agreement, arbitration may be used to resolve the dispute only if, after a dispute arises, all parties to the dispute consent in writing to the use of arbitration.[118] In 2006, Congress passed the Military Lending Act (MLA), which, among other things, prohibited the use of arbitration provisions in extensions of credit to active servicemembers, their spouses, and certain dependents.[119] As first implemented by Department of Defense (DoD) regulations in 2007, the MLA applied to "[c]losed-end credit with a term of 91 days or fewer in which the amount financed does not exceed $2,000." [120] In July 2015, DoD promulgated a final rule that significantly expanded that definition of "consumer credit" to cover closed-end loans that exceeded $2,000 or had terms longer than 91 days as well as various forms of open-end credit, including credit cards.[121] In 2008, Congress amended federal agriculture law to require, among other things, that livestock or poultry contracts containing arbitration agreements disclose the right of the producer or grower to decline the arbitration agreement; the Department of Agriculture issued a final rule implementing the statute in 2011.[122]

As previously noted, Congress again addressed arbitration agreements in the 2010 Dodd-Frank Act. Dodd-Frank section 1414(a) prohibited the use of arbitration agreements in mortgage contracts, which the Bureau implemented in its Regulation Z.[123] Section 921 of the Act authorized the SEC to issue rules to prohibit or impose conditions or limitations on the use of arbitration agreements by investment advisers.[124] Section 922 of the Act invalidated the use of arbitration agreements in connection with certain whistleblower proceedings.[125] Finally, and as discussed in greater detail below, section 1028 of the Act required the Bureau to study the use of arbitration agreements in contracts for consumer financial products and services and authorized this rulemaking.[126] The authority of the Bureau and the SEC are similar under the Dodd-Frank Act except that the SEC does not have to complete a study before promulgating a rule. State legislatures have also taken steps to regulate the arbitration process. Several States, most notably California, require arbitration administrators to disclose basic data about consumer arbitrations that take place in the State.[127] States are constrained in their ability to regulate arbitration because the FAA preempts conflicting State law.[128]

Arbitration Today

Today, the AAA is the primary administrator of consumer financial arbitrations.[129] The AAA's consumer financial arbitrations are governed by the AAA Consumer Arbitration Rules, which includes provisions that, among other things, limit filing and administrative costs for consumers.[130] The AAA also has adopted the AAA Consumer Due Process Protocol, which creates a floor of procedural and substantive protections and affirms that "[a]ll parties are entitled to a fundamentally-fair arbitration process." [131] A second entity, JAMS, administers consumer financial arbitrations pursuant to the JAMS Streamlined Arbitration Rules & Procedures [132] and the JAMS Consumer Minimum Standards. These administrators' procedures for arbitration differ in several respects from the procedures found in court, as discussed in Section 4 of the Study and summarized below at Part III.D.

Further, although virtually all arbitration agreements in the consumer financial context expressly preclude arbitration from proceeding on a class basis, the major arbitration administrators do provide procedures for administering class arbitrations and have occasionally administered them in class arbitrations involving providers of consumer financial products and services.[133] These procedures, which are derived from class action litigation procedures used in court, are described in Section 4.8 of the Study. These class arbitration procedures will only be used by the AAA or JAMS if the arbitration administrator first determines that the arbitration agreement can be construed as permitting class arbitration. These class arbitration procedures are not widely used in consumer financial services disputes: Reviewing consumer financial arbitrations pertaining to six product types filed over a period of three years, the Study found only three.[134] Industry has criticized class arbitration on the ground that it lacks procedural safeguards. For example, class arbitration generally has limited judicial review of arbitrator decisions (for example, on a decision to certify a class or an award of substantial damages).[135]

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[116] *See id.* at 42264–65; *see also id.* at 42211.

[117] *See* U.S. Dep't of Education Press Release, *U.S. Department of Education Takes Further Steps to Protect Students from Predatory Higher Education Institutions* (Mar. 11, 2016), *available at https://www.ed.gov/news/press-releases/us-department-education-takes-further-steps-protect-students-predatory-higher-education-institutions.*

[118] 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, section 11028(a)(2), 116 Stat. 1835 (2002), codified at 15 U.S.C. 1226(a)(2). The statute defines "motor vehicle franchise contract" as "a contract under which a motor vehicle manufacturer, importer, or distributor sells motor vehicles to any other person for resale to an ultimate purchaser and authorizes such other person to repair and service the manufacturer's motor vehicles." *Id.* at section 11028(a)(1)(B), 116 Stat. 1835, codified at 15 U.S.C. 1226(a)(1)(B).

[119] John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109–364, 120 Stat. 2083 (2006).

[120] Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 72 FR 50580 (Aug. 31, 2007) (codified at 32 CFR 232).

[121] *See* 32 CFR 232.8(c). Creditors must comply with the requirements of the rule for transactions or accounts established or consummated on or after October 3, 2016, subject to certain exemptions. 32 CFR 232.13(a). The rule applies to credit card accounts under an open-end consumer credit plan only on October 3, 2017. 32 CFR 232.13(c)(2). Earlier, Congress passed an appropriations provision prohibiting Federal contractors and subcontractors receiving Department of Defense funds from requiring employees or independent contractors arbitrate certain kinds of employment claims. *See* Department of Defense Appropriations Act of 2010, Public Law 111–118, 123 Stat. 3454 (2010), section 8116.

[122] Food, Conservation, and Energy Act of 2008, Public Law 110–234, section 11005, 122 Stat. 1356–58 (2008), codified at 7 U.S.C. 197c; Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Suspension of Delivery of Birds, Additional Capital Investment Criteria, Breach of Contract, and Arbitration, 76 FR 76874, 76890 (Dec. 9, 2011).

[123] *See* Dodd-Frank section 1414(a) (codified as 15 U.S.C. 1639c(e)(1)) ("No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction."); 12 CFR 1026.36(h)(1).

[124] Dodd-Frank section 921(b).

[125] Dodd-Frank section 922(c)(2).

[126] Dodd-Frank section 1028(a).

[127] Cal. Civ. Proc. Code sec. 1281.96 (amended effective Jan. 1, 2015); DC Code secs. 16–4430; Md. Comm. L. Code, secs. 14–3901–05; 10 M.R.S.A. sec. 1394 (Maine).

[128] *See Doctor's Assocs., Inc.* v. *Casarotto,* 517 U.S. 681, 687 (1996) ("Courts may not, however, invalidate arbitration agreements under state laws applicable only to arbitration provisions."); *Perry* v. *Thomas,* 482 U.S. 483, 492 n.9 (1987) ("[S]tate law, whether of legislative or judicial origin, is applicable *if* that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally. A state-law principle that takes its meaning precisely from the fact that a contract to arbitrate is at issue does not comport with this requirement of [FAA] sec. 2.").

[129] *See infra* Part III.D.

[130] AAA, *Consumer Arbitration Rules.*

[131] AAA, *Consumer Due Process Protocol Statement of Principles,* Principle 1. Other principles include that all parties are entitled to a neutral arbitrator and administrator (Principle 3), that all parties retain the right to pursue small claims (Principle 5), and that face-to-face arbitration should be conducted at a "reasonably convenient" location (Principle 6). The AAA explained that it adopted these principles because, in its view, "consumer contracts often do not involve arm's length negotiation of terms, and frequently consist of boilerplate language." The AAA further explained that "there are legitimate concerns regarding the fairness of consumer conflict resolution mechanisms required by suppliers. This is particularly true in the realm of binding arbitration, where the courts are displaced by private adjudication systems." *Id.* at 4.

[132] JAMS, *Streamlined Arbitration Rules & Procedures* (effective July 1, 2014), *available at http://www.jamsadr.com/rules-streamlined-arbitration/.* If a claim or counterclaim exceeds $250,000, the JAMS Comprehensive Arbitration Procedures, not the Streamlined Rules & Procedures, apply. *Id.* Rule 1(a).

III. The Arbitration Study

Section 1028(a) of the Dodd-Frank Act directed the Bureau to study and provide a report to Congress on "the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services." Pursuant to section 1028(a), the Bureau conducted a study of the use of pre-dispute arbitration agreements in contracts for consumer financial products and services and, in March 2015, delivered to Congress its *Arbitration Study: Report to Congress, Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)*.[136]

This Part describes the process the Bureau used to carry out the Study and summarizes the Study's results.

A. April 2012 Request for Information

At the outset of its work, on April 27, 2012, the Bureau published a Request for Information (RFI) in the **Federal Register** concerning the Study.[137] The RFI sought public comment on the appropriate scope, methods, and data sources for the Study. Specifically, the Bureau asked for input on how it should address three topics: (1) The prevalence of arbitration agreements in contracts for consumer financial products and services; (2) arbitration claims involving consumers and companies; and (3) other impacts of arbitration agreements on consumers and companies, such as impacts on the incidence of consumer claims against companies, prices of consumer financial products and services, and the development of legal precedent. The Bureau also requested comment on whether and how the Study should address additional topics. In response to the RFI, the Bureau received and reviewed 60 comment letters. The Bureau also met with numerous commenters and other stakeholders to obtain additional feedback on the RFI.

The feedback received through this process substantially affected the scope of the study the Bureau undertook. For example, several industry trade association commenters suggested that the Bureau study not only consumer financial arbitration but also consumer financial litigation in court. The Study incorporates an extensive analysis of consumer financial litigation—both individual litigation and class actions.[138] Commenters also advised the Bureau to compare the relationship between public enforcement actions and private class actions. The Study included extensive research into this subject, including an analysis of public enforcement actions filed over a period of five years by State and Federal regulators and the relationship, or lack of relationship of these cases to private class litigation.[139] Commenters also recommended that the Bureau study whether arbitration reduces companies' dispute resolution costs and the relationship between any such cost savings and the cost and availability of consumer financial products and services. To investigate this, the Study includes a "difference-in-differences" regression analysis using a representative random sample of the Bureau's Credit Card Database (CCDB), to look for price impacts associated with changes relating to arbitration agreements for credit cards, an analysis that had never before been conducted.[140]

In some cases, commenters to the RFI encouraged the Bureau to study a topic, but the Bureau did not do so because certain effects did not appear measurable. For example, some commenters suggested that the Bureau study the effect of arbitration agreements on the development, interpretation, and application of the rule of law. The Bureau did not identify a robust data set that would allow empirical analysis of this phenomenon. Nonetheless, legal scholars have subsequently attempted to quantify this effect in relation to consumer law.[141]

B. December 2013 Preliminary Report

In December 2013, the Bureau issued a 168-page report summarizing its preliminary results on a number of topics (Preliminary Results).[142] One purpose of releasing the Preliminary Results was to solicit additional input from the public about the Bureau's work on the Study to date. In the Preliminary Results, the Bureau also included a section that set out a detailed roadmap of the Bureau's plans for future work, including the Bureau's plans to address topics that had been suggested in response to the RFI.[143]

In February 2014, the Bureau invited stakeholders for in-person discussions with staff regarding the Preliminary Results, as well as the Bureau's future work plan. Several external stakeholders, including industry associations and consumer groups, took that opportunity and provided additional input regarding the Study.

C. Comments on Survey Design Pursuant to the Paperwork Reduction Act

In the Preliminary Results, the Bureau indicated that it planned to conduct a survey of consumers. The purpose of the survey was to assess consumer awareness of arbitration agreements, as well as consumer perceptions of, and expectations about, dispute resolution with respect to disputes between consumers and financial services providers.[144] Pursuant to the Paperwork Reduction Act, the Bureau also undertook an extensive public outreach and engagement process in connection with its consumer survey (the results of which are published in Section 3 of the Study). The Bureau obtained approval for the consumer survey from the Office of Management and Budget (OMB), and each version of the materials submitted to OMB during this process included draft versions of the survey instrument.[145] In June 2013, the Bureau published a **Federal Register** notice that solicited public comment on its proposed approach to the survey and received 17 comments in response. In July 2013, the Bureau hosted two roundtable meetings to consult with various stakeholders including industry groups, banking trade associations, and consumer advocates. After considering the comments and conducting two focus groups to help refine the survey, but before undertaking the survey, the Bureau published a second **Federal Register** notice in May 2014, which generated an additional seven comments.

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[133] *See* AAA Class Arbitration dockets, *available at https://www.adr.org/aaa/faces/services/disputeresolutionservices/casedocket?_afrLoop=368852573510045&_afrWindowMode=0&_afrWindowId=null.*

[134] Study, *supra* note 2, section 5, at 86–87. The review of class action filings in five of these markets also identified one of these two class arbitrations, as well as an additional class action arbitration filed with JAMS following the dismissal or stay of a class litigation. *Id.*, section 6, at 59.

[135] In a recent amicus curiae filing, the U.S. Chamber of Commerce argued that "[c]lass arbitration is a worst-of-all-worlds Frankenstein's monster: It combines the enormous stakes, formality and expense of litigation that are inimical to bilateral arbitration with exceedingly limited judicial review of the arbitrators' decisions." Br. of the Chamber of Commerce of the United States of America as Amicus Curiae in Support of Pl.-Appellants at 9, *Marriott Ownership Resorts, Inc.* v. *Sterman*, No. 15–10627 (11th Cir. Apr. 1, 2015).

[136] Study, *supra* note 2.

[137] Arbitration Study RFI, *supra* note 2.

[138] *See generally* Study, *supra* note 2, sections 6 and 8.

[139] *Id.*, section 9.

[140] *Id.*, section 10 at 7–14.

[141] *See* Myriam Gilles, *The End of Doctrine: Private Arbitration, Public Law and the Anti-Lawsuit Movement*, (Benjamin N. Cardozo Sch. of L. Faculty Research Paper No. 436, 2014), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2488575 (analyzing cases under "counterfactual scenarios" as to "what doctrinal developments in antitrust and consumer law . . . would not have occurred over the past decade if arbitration clauses had been deployed to the full extent now authorized by the Supreme Court").*

[142] Preliminary Results, *supra* note 2.

[143] *Id. at* 129–31.

D. The March 2015 Arbitration Study

The Bureau ultimately focused on nine empirical topics in the Study:

1. The prevalence of arbitration agreements in contracts for consumer financial products and services and their main features (Section 2 of the Study);
2. Consumers' understanding of dispute resolution systems, including arbitration and the extent to which dispute resolution clauses affect consumer's purchasing decisions (Section 3 of the Study);
3. How arbitration procedures differ from procedures in court (Section 4 of the Study);
4. The volume of individual consumer financial arbitrations, the types of claims, and how they are resolved (Section 5 of the Study);
5. The volume of individual and class consumer financial litigation, the types of claims, and how they are resolved (Section 6 of the Study);
6. The extent to which consumers sue companies in small claims court with respect to disputes involving consumer financial services (Section 7 of the Study);
7. The size, terms, and beneficiaries of consumer financial class action settlements (Section 8 of the Study);
8. The relationship between public enforcement and consumer financial class actions (Section 9 of the Study); and
9. The extent to which arbitration agreements lead to lower prices for consumers (Section 10 of the Study).

As described further in each subsection below, the Bureau's research on several of these topics drew in part upon data sources previously unavailable to researchers. For example, the AAA voluntarily provided the Bureau with case files for consumer arbitrations filed from the beginning of 2010, approximately when the AAA began maintaining electronic records, to the end of 2012. Compared to data sets previously available to researchers, the AAA case files covered a much longer period and were not limited to case files for cases resulting in an award. Using this data set, the Bureau conducted the first analysis of arbitration frequency and outcomes specific to consumer financial products and services.[146] Similarly, the Bureau submitted orders to financial service providers in the checking account and payday loan markets, pursuant to its market monitoring authority under Dodd-Frank section 1022(c)(4), to obtain a sample set of agreements of those institutions. Using these agreements, among others gathered from other sources, the Bureau conducted the most comprehensive analysis to date of the arbitration content of contracts for consumer financial products and services.[147]

The results of the Study also broke new ground because the Study, compared to prior research, generally considered larger data sets than had been reviewed by other researchers while also narrowing its analysis to consumer financial products and services. In total, the Study included the review of over 850 agreements for certain consumer financial products and services; 1,800 consumer financial services arbitrations filed over a three-year period; a random sample of the nearly 3,500 individual consumer finance cases identified as having been filed over a period of three years; and all of the 562 consumer finance class actions identified in Federal and selected State courts of the same time period. The study also included over 40,000 small claims court filings over the course of a single year. The Bureau supplemented this research by assembling and analyzing all of the more than 400 consumer financial class action settlements in Federal courts over a five-year period and more than 1,100 State and Federal public enforcement actions in the consumer finance area.[148] The Study also includes the findings of the Bureau's survey of over 1,000 credit card consumers, focused on exploring their knowledge and understanding of arbitration and other dispute resolution mechanisms. The sections below describe in detail the process the Bureau followed in undertaking each section of the Study and summarize the main results of each section.[149]

Prevalence and Features of Arbitration Agreements (Section 2 of Study)

Section 2 of the Study addresses two central issues relating to the use of arbitration agreements: How frequently such agreements appear in contracts for consumer financial products and services and what features such agreements contain. Among other findings, the Study determined that arbitration agreements are commonly used in contracts for consumer financial products and services and that the AAA is the primary administrator of consumer financial arbitrations.

To conduct this analysis, the Bureau reviewed contracts for six product markets: Credit cards, checking accounts, general purpose reloadable (GPR) prepaid cards, payday loans, private student loans, and mobile wireless contracts governing third-party billing services.[150] Previous studies that analyzed the prevalence and features of arbitration agreements in contracts for consumer financial products and services either relied on small samples or limited their study to one market.[151] As a result, the Bureau's inquiry in Section 2 of the Study represents the most comprehensive analysis to date of the arbitration content of contracts for consumer financial products and services.

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[144] *Id.* at 129.

[145] The survey was assigned OMB control number 3170–0046.

[146] Study, *supra* note 2, section 5 at 19–68.

[147] *See generally id.*, section 2.

[148] Since the publication of the Study, the Bureau determined that 41 FDIC enforcement actions were inadvertently omitted from the results published in Section 9 of the Study. The corrected total number of enforcement actions reviewed in Section 9 was 1,191. Other figures, including the identification of public enforcement cases with overlapping private actions, were not affected by this omission.

[149] Overall, the markets assessed in the Study represent lending money (*e.g.*, small-dollar open-ended credit, small-dollar closed-ended credit, large-dollar unsecured credit, large-dollar secured credit), storing money (*i.e.*, consumer deposits), and moving or exchanging money. The Study also included debt relief and debt collection disputes arising from these consumer financial products and services. Study, *supra* note 2, section 1 at 7–9. While credit scoring and credit monitoring were not included in these product categories, settlements regarding such products were included in the Study's analysis of class action settlements, as well as the Study's analysis of the overlap between public enforcement actions and private class action litigation.

[150] Study, *supra* note 2, section 2 at 3.

[151] *Id.*, section 2 at 4–6.

The Bureau's sample of credit card contracts consisted of contracts filed by 423 issuers with the Bureau as required by the Credit Card Accountability, Responsibility and Disclosure Act (CARD Act) as implemented by Regulation Z.[152] Taken together, these contracts covered nearly all consumers in the credit card market. For deposit accounts, the Bureau identified the 100 largest banks and the 50 largest credit unions, and constructed a random sample of 150 small and mid-size banks. The Bureau obtained the deposit account agreements for these institutions by downloading them from the institutions' Web sites and through orders sent to institutions using the Bureau's market monitoring authority.

For prepaid cards, the Bureau's sample included agreements from two sources. The Bureau gathered agreements for 52 GPR prepaid cards that were listed on the Web sites of two major card networks and a Web site that provided consolidated card information as of August 2013. The Bureau also obtained agreements from GPR prepaid card providers that had been included in several recent studies of the terms of GPR prepaid cards and that continued to be available as of August 2014.[153] For the storefront payday loan market, the Bureau again used its market monitoring authority to obtain a sample of 80 payday loan contracts from storefront payday lenders in California, Texas, and Florida.[154] For the private student loan market, the Bureau sampled seven private student loan contracts plus the form contract used by 250 credit unions that use a leading credit union service organization.[155] For the mobile wireless market, the Bureau reviewed the wireless contracts of the eight largest facilities-based providers of mobile wireless services[156] which also govern third-party billing services.[157]

The analysis of the agreements that the Bureau collected found that tens of millions of consumers use consumer financial products or services that are subject to arbitration agreements, and that, in some markets such as checking accounts and credit cards, large providers are more likely to have the agreements than small providers.[158] In the credit card market, the Study found that small bank issuers were less likely to include arbitration agreements than large bank issuers.[159] Likewise, only 3.3 percent of credit unions in the credit card sample used arbitration agreements.[160] As a result, while 15.8 percent of credit card issuers included such agreements in their contracts, 53 percent of credit card loans outstanding were subject to such agreements.[161] In the checking account market, the Study again found that larger banks tended to include arbitration agreements in their consumer checking contracts (45.6 percent of the largest 103 banks, representing 58.8 percent of insured deposits).[162] In contrast, only 7.1 percent of small-and mid-sized banks and 8.2 percent of credit unions used arbitration agreements.[163] In the prepaid card and payday loan markets, the Study found that the substantial majority of contracts—92.3 percent of GPR prepaid card contracts and 83.7 percent of the storefront payday loan contracts—included such agreements.[164] In the private student loan and mobile wireless markets, the Study found that most of the large companies—85.7 percent of the private student loan contracts, and 87.5 percent of the mobile wireless contracts—used arbitration agreements.[165]

In addition to examining the prevalence of arbitration agreements, Section 2 of the Study reviewed 13 features sometimes included in such agreements.[166] One feature the Bureau studied was which entity or entities were designated by the contract to administer the arbitration. The Study found that the AAA was the predominant arbitration administrator for all the consumer financial products the Bureau examined in the Study. The contracts studied specified the AAA as at least one of the possible arbitration administrators in 98.5 percent of the credit card contracts with arbitration agreements; 98.9 percent of the checking account contracts with arbitration agreements; 100 percent of the GPR prepaid card contracts with arbitration agreements; 85.5 percent of the storefront payday loan contracts with arbitration agreements; and 66.7 percent of private student loan contracts with arbitration agreements.[167] The contracts specified the AAA as the sole option in 17.9 percent of the credit card contracts with arbitration agreements; 44.6 percent of the checking account contracts with arbitration agreements; 63.0 percent to 72.7 percent of the GPR prepaid card contracts with arbitration agreements; 27.4 percent of the payday loan contracts with arbitration agreements; and one of the private student loan contracts the Bureau reviewed.[168]

In contrast, JAMS is specified in relatively fewer arbitration agreements. The Study found that the contracts studied specified JAMS as at least one of the possible arbitration administrators in 40.9 percent of the credit card contracts with arbitration agreements; 34.4 percent of the checking account contracts with arbitration agreements; 52.9 percent of the GPR prepaid card contracts with arbitration agreements; 59.2 percent of the storefront payday loan contracts with arbitration agreements; and 66.7 percent of private student loan contracts with arbitration agreements. JAMS was specified as the sole option in 1.5 percent of the credit card contracts with arbitration agreements (one contract); 1.6 percent of the checking account contracts with arbitration agreements (one contract); 63.0 percent to 72.7 percent of the GPR prepaid card contracts with arbitration agreements; and none of the payday loan or private student loan contracts the Bureau reviewed.[169]

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[152] 12 CFR 1026.58(c) (requiring credit card issuers to submit their currently-offered credit card agreements to the Bureau to be posted on the Bureau's Web site).

[153] Study, *supra* note 2, section 2 at 18.

[154] *Id.*, section 2 at 21–22. This data was supplemented with a smaller, non-random sample of payday loan contracts from tribal, offshore, and other online payday lenders, which is reported in Appendix C of the Study.

[155] *Id*, section 2 at 24.

[156] Facilities-based mobile wireless service providers are wireless providers that "offer mobile voice, messaging, and/or data services using their own network facilities," in contrast to providers that purchase mobile services wholesale from facilities-based providers and resell the services to consumers, among other types of providers. Federal Communications Commission, *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless*, at 37–39 (2013), *available at https://www.fcc.gov/document/16th-mobile-competition-report.*

[157] Study, *supra* note 2, section 2 at 25–26. In mobile wireless third-party billing, a mobile wireless provider authorizes third parties to charge consumers, on their wireless bill, for services provided by the third parties. Because mobile wireless third-party billing involves the extension of credit to, and processing of payments for, consumers in connection with goods and services that the provider does not directly sell and that consumers do not purchase from the provider, the provision of mobile wireless third-party billing is a "consumer financial product or service" under the Dodd-Frank Act. 12 U.S.C. 5481(6), 15(A)(i) and (vii).

[158] Study, *supra* note 2, section 1 at 9.

[159] *Id.*, section 2 at 10.

[160] *Id.*

[161] *Id.* As the Study notes, the *Ross* settlement—a 2009 settlement in which four of the ten largest credit card issuers agreed to remove their arbitration agreements—likely impacts these results. Had the settling defendants in *Ross* continued to use arbitration agreements, 93.6 percent of credit card loans outstanding would be subject to arbitration agreements. *Id.* section 2 at 11.

[162] *Id.*, section 2 at 14.

[163] *Id.*

[164] *Id.*, section 2 at 19, 22.

[165] *Id.*, section 2 at 24, 26.

[166] *Id.*, section 2 at 30.

[167] *Id.*, section 2 at 38.

[168] *Id.*, section 2 at 36. The prevalence of GPR prepaid cards with arbitration agreements specifying AAA as the sole option is presented as a range because two GPR prepaid firms studied each used two different form cardholder agreements, with different agreements pertaining to different features. Because of this it was unclear precisely how much of the prepaid market share represented by each provider was covered by a particular cardholder agreement. As such, for GPR prepaid cards, prevalence by market share is presented as a range rather than a single figure.

The Bureau's analysis also found, among other things, that nearly all the arbitration agreements studied included provisions stating that arbitration may not proceed on a class basis. Across each product market, 85 percent to 100 percent of the contracts with arbitration agreements—covering over 99 percent of market share subject to arbitration in the six product markets studied—included such no-class-arbitration provisions.[170] Most of the arbitration agreements that included such provisions also contained an "anti-severability" provision stating that, if the no-class-arbitration provision were to be held unenforceable, the entire arbitration agreement would become unenforceable as a result.[171]

The Study found that most of the arbitration agreements contained a small claims court "carve-out," permitting either the consumer or both parties to file suit in small claims court.[172] The Study similarly explored the number of arbitration provisions that allowed consumers to "opt out" or otherwise reject an arbitration agreement. To exercise the opt-out right, consumers must follow stated procedures, which usually requires all authorized users on an account to physically mail a signed written document to the issuer (electronic submission is permitted only rarely), within a stated time limit. With the exception of storefront payday loans and private student loans, the substantial majority of arbitration agreements in each market studied generally did not include opt-out provisions.[173]

The Study analyzed three different types of cost provisions: provisions addressing the initial payment of arbitration fees; provisions that addressed the reallocation of arbitration fees in an award; and provisions addressing the award of attorney's fees.[174] Most arbitration agreements reviewed in the Study contained provisions that had the effect of capping consumers' up front arbitration costs at or below the AAA's maximum consumer fee thresholds. These same arbitration agreements took noticeably different approaches to the reallocation of arbitration fees in the arbitrator's award (approximately one-fifth of the arbitration agreements in credit card, checking account, and storefront payday loan markets permitted shifting company fees to consumers).[175] The Study also found only negligible market shares of relevant markets directed or permitted arbitrators to award attorney's fees to prevailing companies.[176] A significant share of arbitration agreements across almost all markets did not address attorney's fees.[177]

The Study found that many arbitration agreements permit the arbitrator to reallocate arbitration fees from one party to the other. About one-third of credit card arbitration agreements, one-fourth of checking account arbitration agreements, and half of payday loan arbitration agreements expressly permitted the arbitrator to shift arbitration costs to the consumer.[178] However, as the Study pointed out, the AAA's consumer arbitration fee schedule, which became effective March 1, 2013, restricts such reallocation.[179] With respect to another type of provision that affects consumers' costs in arbitration—where the arbitration must take place—the Study noted that most, although not all, arbitration agreements contained provisions requiring or permitting hearings to take place in locations close to the consumer's place of residence.[180]

Further, most of the arbitration agreements the Bureau studied contained disclosures describing the differences between arbitration and litigation in court. Most agreements disclosed expressly that the consumer would not have a right to a jury trial, and most disclosed expressly that the consumer could not be a party to a class action in court.[181] Depending on the product market, between one-quarter and two-thirds of the agreements disclosed four key differences between arbitration and litigation in court: no jury trial is available in arbitration; parties cannot participate in class actions in court; discovery is typically more limited in arbitration; and appeal rights are more limited in arbitration.[182] The Study found that this language was often capitalized or in boldfaced type.[183]

The Study also examined whether arbitration agreements limited recovery of damages—including punitive or consequential damages—or specified the time period in which a claim had to be brought. The Study determined that most agreements in the credit card, payday loan, and private student loan markets did not include damages limitations. However, the opposite was true of agreements in checking account contracts, where more than three-fourths of the market included damages limitations; prepaid card contracts, almost all of which included such limitations; and mobile wireless contracts, all of which included such limitations. A review of consumer agreements *without* arbitration agreements revealed a similar pattern, albeit with damages limitations being somewhat less common.[184]

The Study also found that a minority of arbitration agreements in two markets set time limits other than the statute of limitations that would apply in a court proceeding for consumers to file claims in arbitration. Specifically, these types of provisions appeared in 28.4 percent and 15.8 percent of the checking account and mobile wireless agreements by market share, respectively.[185] Again, a review of consumer agreements without arbitration agreements showed that 10.7 percent of checking account agreements imposed a one-year time limit for consumer claims.[186] No storefront payday loan, private student loan, or mobile wireless contracts in the sample without arbitration agreements had such time limits.[187]

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[169] *Id.*

[170] *Id.*, section 2 at 44–47.

[171] *Id.*, section 2 at 46–47.

[172] *Id.*, section 2 at 33–34.

[173] *Id.*, section 2 at 31–32.

[174] *Id.*, section 2 at 58. Many contracts—particularly checking account contracts—included general provisions about the allocation of costs and expenses arising out of disputes that were *not* specific to arbitration costs. Indeed, such provisions were commonly included in contracts without arbitration agreements as well. While such provisions could be relevant to the allocation of expenses in an arbitration proceeding, the Study did not address such provisions because they were not specific to arbitration agreements.

[175] *Id.*, section 2 at 62–66.

[176] *Id.*, section 2 at 67.

[177] *Id.*, section 2 at 66–76. As described *supra* when the arbitration agreement did not address the issue, the arbitrator is able to award attorney's fees when permitted elsewhere in the agreement or by applicable law.

[178] *Id.*, section 2 at 62–66.

[179] *Id.*, section 2 at 61–62.

[180] *Id.*, section 2 at 53.

[181] *Id.*, section 2 at 72.

[182] *Id.*, section 2 at 72–79.

[183] *Id.*, section 2 at 72 and n.144.

[184] *Id.*, section 2 at 49. More than one-third (35 percent) of large bank checking account contracts without arbitration agreements included either a consequential damages waiver or a consequential damages waiver together with a punitive damages waiver. Similarly a third of prepaid card contracts without arbitration agreements included a consequential damages waiver, a punitive damages waiver, or both. The only mobile wireless contract without an arbitration agreement limited any damages recovery to the amount of the subscriber's bill. *Id.*

[185] *Id.*, section 2 at 50.

The Study assessed the extent to which arbitration agreements included contingent minimum recovery provisions, which provide that consumers would receive a specified minimum recovery if an arbitrator awards the consumer more than the amount of the company's last settlement offer. The Study found that such provisions were uncommon; they appeared in three out of the six private student loan agreements the Bureau reviewed, but, in markets other than student loans, they appeared in 28.6 percent or less of the agreements the Bureau studied.[188]

Consumer Understanding of Dispute Resolution Systems, Including Arbitration (Section 3 of Study)

Section 3 of the Study presented the results of the Bureau's telephone survey of a nationally representative sample of credit card holders.[189] The survey examined two main topics: (1) The extent to which dispute resolution clauses affected consumer's decisions to acquire credit cards; and (2) consumers' awareness, understanding, and knowledge of their rights in disputes against their credit card issuers. In late 2014, the Bureau's contractor completed telephone surveys with 1,007 respondents who had credit cards.[190]

The consumer survey found that when presented with a hypothetical situation in which their credit card issuer charged them a fee they knew to be wrongly assessed and in which they exhausted efforts to obtain relief from the company through customer service, only 2.1 percent of respondents stated that they would seek legal advice or consider legal proceedings.[191] Almost the same proportion of respondents stated that they would simply pay for the improperly assessed fee (1.7 percent).[192] A majority of respondents (57.2 percent) said that they would cancel their cards.[193]

Respondents also reported that factors relating to dispute resolution—such as the presence of an arbitration agreement—played little to no role when they were choosing a credit card. When asked an open-ended question about all the factors that affected their decision to obtain the credit card that they use most often for personal use, no respondents volunteered an answer that referenced dispute resolution procedures.[194] When presented with a list of nine features of credit cards—features such as interest rates, customer service, rewards, and dispute resolution procedures—and asked to identify those features that factored into their decision, respondents identified dispute resolution procedures as being relevant less often than any other option.[195]

As for consumers' knowledge and default assumptions as to the means by which disputes between consumers and financial service providers can be resolved, the survey found that consumers generally lack awareness regarding the effects of arbitration agreements. Of the survey's 1,007 respondents, 570 respondents were able to identify their credit card issuer with sufficient specificity to enable the Bureau to find the issuer's standard credit card agreement and thus to compare the respondents' beliefs with respect to the terms of their agreements with the agreements' actual terms.[196] Among the respondents whose credit card contracts did not contain an arbitration agreement, when asked if they could sue their credit card issuer in court, 43.7 percent answered "Yes," 7.7 percent answered "No," and 47.8 percent answered "Don't Know." [197] At the same time, among the respondents whose credit card agreements *did* contain arbitration requirements, 38.6 percent of respondents answered "Yes," while 6.8 percent answered "No," and 54.4 percent answered "Don't Know." [198] Even the 6.8 percent of respondents who stated that they could not sue their credit card issuers in court may not have had knowledge of the arbitration agreement: As noted above, a similar proportion of respondents *without* an arbitration agreement in their contract—7.7 percent compared to 6.8 percent—reported that they could not sue their issuers in court.[199] When asked if they could participate in class action lawsuits against their credit card issuer, more than half of the respondents whose contracts had pre-dispute arbitration agreements thought they could participate (56.7 percent).[200]

Respondents were also generally unaware of any opt-out opportunities afforded by their issuer. Only one respondent whose current credit card contract permitted opting out of the arbitration agreement recalled being offered such an opportunity.[201]

Comparison of Procedures in Arbitration and in Court (Section 4 of Study)

While the Study generally limited its scope to empirical analysis of dispute resolution, Section 4 of the Study compared the procedural rules that apply in court and in arbitration. Particularly given changes to the AAA consumer fee schedule that took effect March 1, 2013, the procedural rules are relevant to understanding the context from which the Study's empirical findings arise.

The Study's procedural overview described court litigation as reflected in the Federal Rules and, as an example of a small claims court process, the Philadelphia Municipal Court Rules of Civil Practice. It compared those procedures to arbitration procedures as set out in the rules governing consumer arbitrations administered by the two leading arbitration administrators in the United States, the AAA and JAMS. The Study compared arbitration and court procedures according to eleven factors: The process for filing a claim, fees, legal representation, the process for selecting the decision maker, discovery, dispositive motions, class proceedings, privacy and confidentiality, hearings, judgments and awards, and appeals.

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[186] *Id.*, section 2 at 51.

[187] *Id.*

[188] *Id.*, section 2 at 70–71 (albeit covering 43.0 percent of the storefront payday loan market subject to arbitration agreements and 68.4 percent of the mobile wireless market subject to arbitration agreements).

[189] The Bureau focused its survey on credit cards because credit cards offer strong market penetration with consumers across the nation. Further, because major credit card issuers are required to file their agreements with the Bureau (12 CFR 1026.58(c)), limiting the survey to credit cards permitted the Bureau to verify the accuracy of many of the respondents' default assumptions about their dispute resolution rights by examining the actual credit card agreements to which the consumers were subject to at the time of the survey. *Id.*, section 3 at 2.

[190] Based on the size of the Bureau's sample, its results were representative of the national population, with a sampling error of plus or minus 3.1 percent, though the sampling error is larger in connection with sample sets of fewer than the 1,007 respondents. *Id.*, section 3 at 10.

[191] *Id.*, section 3 at 18.

[192] *Id.*

[193] *Id.*

[194] *Id.*, section 3 at 15.

[195] *Id.*

[196] *Id.*, section 3 at 18.

[197] *Id.*, section 3 at 18–20.

[198] *Id.* These respondents were asked additional questions to account for the possibility that respondents who answered "Yes" meant suing their issuers in small claims court; that they meant they could bring a lawsuit even though they are subject to an arbitration agreement; or that they had previously "opted-out" of their arbitration agreements with their issuers. With those caveats in mind and after accounting for demographic weighting, the Study found that the consumers whose credit cards included arbitration requirements were wrong at least 79.8 percent of the time. *Id.*, section 3 at 20–21.

[199] *Id.*, section 3 at 18–20.

[200] *Id.*, section 3 at 25.

[201] *Id.*, section 3 at 21 & 21 n.44. Eighteen other respondents recalled being offered an opportunity to opt out of their arbitration requirements. But, for the respondents whose credit card agreements the Bureau could identify, none of their 2013 agreements actually contained opt-out provisions. In fact, four of the agreements did not even contain pre-dispute arbitration provisions.

Filing a Claim and Fees. The Study described the processes for filing a claim in court and in arbitration. With respect to fees, the Study noted that the fee for filing a case in Federal court is $350 plus a $50 administrative fee—paid by the party filing suit, regardless of the amount being sought—and the fee for a small claims filing in Philadelphia Municipal Court ranges from $63 to $112.38.[202] In arbitration, under the AAA consumer fee schedule that took effect March 1, 2013, the consumer pays a $200 administrative fee, regardless of the amount of the claim and regardless of the party that filed the claim; in JAMS arbitrations, when a consumer initiates arbitration against the company, the consumer is required to pay a $250 fee.[203] Prior to March 1, 2013, arbitrators in AAA consumer arbitrations had discretion to reallocate fees in the ultimate award. After March 1, 2013, arbitrators can only reallocate arbitration fees in the award if required by applicable law or if the claim "was filed for purposes of harassment or is patently frivolous." [204]

Parties in court generally bear their own attorney's fees, unless a statute or contract provision provides otherwise or a party is shown to have acted in bad faith. However, under several consumer protection statutes, providers may be liable for attorney's fees.[205] Under the AAA's Consumer Rules, "[t]he arbitrator may grant any remedy, relief, or outcome that the parties could have received in court, including awards of attorney's fees and costs, in accordance with the law(s) that applies to the case." [206]

Representation. The Study noted that in most courts, individuals can either represent themselves or hire a lawyer as their representative.[207] In arbitration, the rules are more flexible than in many courts about the identity of any party representative. For example, the AAA Consumer Rules permit a party to be represented "by counsel or other authorized representative, unless such choice is prohibited by applicable law." [208] Some states, however, prohibit non-attorneys to represent parties in arbitration.[209]

Selecting the Decisionmaker. The Study noted that court rules generally do not permit parties to reject the judge assigned to hear their case.[210] In arbitration, if the parties agree on the individual they want to serve as arbitrator, they can choose that person to decide their dispute; if the parties cannot agree on the arbitrator, the arbitrator is selected following the procedure specified in their contract or in the governing arbitration rules.[211]

Discovery. The Study stated that the Federal Rules provide a variety of means by which a party can discover evidence in the possession of the opposing party or a third party, while the right to discovery in arbitration is more limited.[212]

Dispositive Motions. The Study noted that the Federal Rules provide for a variety of motions by which a party can seek to dispose of the case, either in whole or in part, while arbitration rules typically do not expressly authorize dispositive motions.[213]

Class Proceedings. The Study described the procedural rules for class actions under Federal Rule 23 and noted that the Bureau was unaware of a class action procedure for small claims court.[214] The Study further noted that the AAA and JAMS have adopted rules, derived from Rule 23, for administering arbitrations on a class basis.[215]

Privacy and Confidentiality. The Study stated that court litigation (including small claims court) is a public process, with proceedings conducted in public courtrooms and the record generally available for public review; by comparison, arbitration is a private although not necessarily a confidential process.[216]

Hearings. The Study stated that if a case in court does not settle before trial or get resolved on a dispositive motion, it will proceed to trial in the court in which the case was filed. A jury may be available for these claims. On the other hand, if an arbitration filing does not settle, the arbitrator can resolve the parties' dispute based on the parties' submission of documents alone, by a telephone hearing, or by an in-person hearing.[217]

Judgments/Awards. The Study further noted that the outcome of a case in court is reflected in a judgment, which the prevailing party can enforce through various means of post-judgment relief, and that the outcome of a case in arbitration is reflected in an award, which, once turned into a court judgment, can be enforced the same as any other court judgment.[218]

Appeals. The Study stated that parties in court can appeal a judgment against them to an appellate court; by comparison, parties can challenge arbitration awards in court only on the more limited grounds set out in the FAA.[219]

Consumer Financial Arbitrations: Frequency and Outcomes (Section 5 of Study)

Section 5 of the Study analyzed arbitrations of consumer finance disputes between consumers and consumer financial services providers. This section tallied the frequency of such arbitrations, including the number of claims brought and a classification of which claims were brought. It also examined outcomes, including how cases were resolved and how consumers and companies fared in the relatively small share of cases that an arbitrator resolved on the merits. The Study performed this analysis for arbitrations concerning credit cards, checking accounts, payday loans, GPR prepaid cards, private student loans, and auto purchase loans. To conduct this analysis, the Bureau used electronic case files from the AAA.[220] Pursuant to a non-disclosure agreement, the AAA voluntarily provided the Bureau its electronic case records for consumer disputes filed during the years 2010, 2011, and 2012.[221] Because the AAA provided the Bureau with case records for all disputes filed in arbitration during this period, Section 5 of the Study provides a reasonably complete picture of the frequency and typology of claims that consumers and companies file in arbitration.[222]

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[202] *Id.*, section 4 at 10. As the Study noted, a federal statute permits indigent plaintiffs filing in Federal court to seek to have the court waive the required filing fees. *Id.* (citing 28 U.S.C. 1915(a)).

[203] *Id.*, section 4 at 11–12.

[204] *Id.*, section 4 at 11–12.

[205] *See, e.g.*, 15 U.S.C. 1640(a)(3) (TILA).

[206] Study, *supra* note 2, section 4 at 12.

[207] *Id.*, section 4 at 13.

[208] *Id.*, section 4 at 13–14.

[209] *Id.*, section 4 at 14.

[210] *Id.*

[211] *Id.*, section 4 at 15.

[212] Arbitration rules on discovery give the arbitrator authority to manage discovery "with a view to achieving an efficient and economical resolution of the dispute, while at the same time promoting equality of treatment and safeguarding each party's opportunity to present its claims and defenses." AAA Commercial Rules, Rule R–22, *cited in* Study, *supra* note 2, section 4 at 16–17. Arbitration rules do not allow for broad discovery from third parties, which were not parties to the underlying agreement to arbitrate disputes. Section 7 of the FAA, however, grants arbitrators the power to subpoena witnesses to appear before them (and bring documents). 9 U.S.C. 7. Appellate courts are split on whether Section 7 of the FAA authorizes subpoenas for discovery *before* an arbitral hearing. Study, *supra* note 2, section 4 at 17 n.78. As described above, many arbitration agreements highlighted the difference in discovery practices in arbitration proceedings as compared to litigation. *See id.*

[213] Study, *supra* note 2, section 4 at 18.

[214] *Id.*, section 4 at 18–20.

[215] *Id.*, section 4 at 20.

[216] *Id.*, section 4 at 21–22. A small minority of arbitration agreements, primarily in the checking account market, included provisions requiring that the proceedings remain confidential. *Id.*, section 2 at 51–53.

[217] *Id.*, section 4 at 22–24.

[218] *Id.*, section 4 at 24.

[219] Courts may vacate arbitration awards under the FAA only in limited circumstances. 9 U.S.C. 10. *Cf. supra* notes 98–106 and accompanying text (identifying the narrow grounds upon which a court may determine an arbitration agreement to be unenforceable).

[220] *See* Christopher R. Drahozal & Samantha Zyontz, *An Empirical Study of AAA Consumer*

The Study identified about 1,847 filings in total—about 616 per year—with the AAA for the six product markets combined.[223] According to the standard AAA claim forms, about 411 arbitrations per year were designated as having been filed by consumers alone; the remaining filings were designated as having been filed by companies or filed as mutual submission by both the consumer and the company.[224] Forty percent of the arbitration filings involved a dispute over the amount of debt a consumer allegedly owed to a company, with no additional affirmative claim by either party; in 31 percent of the filings, parties brought affirmative claims with no formal dispute about the amount of debt owed; in another 29 percent of the filings, consumers disputed alleged debts, but also brought affirmative claims against companies.[225]

Although claim amounts varied by product, in disputes involving affirmative claims by consumers, the average amount of such claims was approximately $27,000 and the median amount of such claims was $11,500.[226] About 25 disputes a year involved affirmative claims by consumers of $1,000 or less.[227] In debt disputes, the average disputed debt amount was approximately $15,700; the median was approximately $11,000.[228] Across all six product markets, about 25 cases per year involved disputed debts of $1,000 or less.[229]

Overall, consumers were represented by counsel in 63.2 percent of arbitration cases.[230] The rate of representation, however, varied widely based on the product at issue; in payday and student loan disputes, for example, consumers had counsel in about 95 percent of all cases filed.[231]

To analyze the outcomes in arbitration, the Bureau confined its analysis to claims filed in 2010 and 2011 in order to limit the number of cases that were pending at the close of the period for which the Bureau had data. The Bureau's analysis of arbitration outcomes was limited by a number of factors that are unavoidable in any review of dispute resolution.[232] Among other issues, settlement terms were rarely known if the parties settled their disputes. In many cases, even the fact that a settlement occurred was difficult to discern because the parties were not required to notify the AAA of a settlement.[233] Accordingly, an incomplete file could indicate a settlement, on the one hand, or that the proceeding was still in progress but relatively dormant, on the other hand. Because parties settle claims strategically, disputes that *did* reach an arbitrator's decision on the merits were not a representative sample of the disputes that were filed.[234] For example, if parties settled all strong consumer (or company) claims, then consumers (or companies) may appear to do poorly before arbitrators because only weak claims are heard at hearings. As the Study explained, these limitations are inherent in a review of this nature and unavoidable.

With those significant caveats noted, the Study determined that in 32.2 percent of the 1,060 disputes filed during the first two years of the study period (341 disputes) arbitrators resolved the dispute on the merits. In 23.2 percent of the disputes (246 disputes), the record shows that the parties settled. In 34.2 percent of disputes (362 disputes), the available AAA case record ends in a manner that is consistent with settlement—for example, a voluntary dismissal of the action—but the Bureau could not definitively determine that settlement occurred. In the remaining 10.5 percent of disputes (111 disputes), the available AAA case record ends in a manner suggesting the dispute is unlikely to have settled; for example, the AAA may have refused to administer the dispute because it determined that the arbitration agreement at issue was inconsistent with the AAA's Consumer Due Process Protocol.[235]

As noted above, only a small portion of filed arbitrations reached a decision. The Study identified 341 cases filed in 2010 and 2011 that were resolved by an arbitrator and for which the outcome was ascertainable.[236] Of these 341 cases, 161 disputes involved an arbitrator decision on a consumer's affirmative claim. Of the cases in which the Bureau could determine the results, the consumer obtained relief on their affirmative claims in 32 disputes (20.3 percent).[237] Consumers obtained debt forbearance in 19.2 percent of the cases in which an arbitrator could have provided some form of debt forbearance (46 cases).[238] The total amount of affirmative relief awarded in all cases was $172,433 and total debt forbearance was $189,107.[239] Of the 52 cases filed in 2010 and 2011 that involved consumer affirmative claims of $1,000 or less, arbitrators resolved 19, granting affirmative relief to consumers in four

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Arbitrations, 25 Ohio St. J. on Disp. Res. 843, 845 (2010) (reviewing 301 AAA consumer disputes covering a nine-month period in 2007, but limiting analysis to disputes actually resolved by arbitrators); Drahozal & Zyontz, *Creditor Claims in Arbitration and in Court*, 7 Hastings Bus. L. J. 77 (2011) (follow-on study that compared debt collection claims by companies in AAA consumer arbitrations with debt collection claims in Federal court and in State court proceedings in jurisdictions in Virginia and Oklahoma).

[221] Study, *supra* note 2, section 5 at 17.

[222] While the analysis does not provide a window into how arbitrations are resolved in other arbitral fora, the AAA is the predominant administrator of consumer financial arbitrations. *Id.*, section 2 at 35.

[223] Study, *supra* note 2, section 5 at 9.

[224] *Id.*, section 1 at 11. Under the AAA policies that applied during the period studied, a company could unilaterally file a debt collection dispute against a consumer in arbitration only if a preceding debt collection litigation had been dismissed or stayed in favor of arbitration. Companies could file disputes mutually with consumers; they could also file counterclaims in dispute filed by consumers against them. *Id.*, section 5 at 27 n.56. As noted in the Study, the Bureau did not attempt to verify whether the representation on the claim forms as to the party filing the case was accurate. For example, in a number of cases that were designated as having been filed by a consumer, the record indicates that the consumer failed to prosecute the action and that the company actually paid the fees and obtained a quasi-default judgment. In other cases, a law firm representing consumers filed a number of student loan disputes but indicated on the checkbox that the action was being filed by the company. *Id.*, section 5 at 19 n.38.

[225] *Id.*, section 1 at 11.

[226] *Id.*, section 5 at 10.

[227] *Id.*

[228] *Id.*

[229] *Id.*

[230] *Id.*, section 5 at 29.

[231] *Id.*, section 5 at 28–32.

[232] *Id.*, section 5 at 4–7. As a result, the Bureau was only able to determine a substantive outcome in 341 cases.

[233] *Id.*, section 5 at 6.

[234] *Id.*, section 5 at 7 (noting that it is "quite challenging to attempt to answer even the simple question of how well do consumers (or companies) fare in arbitration"). The Study notes further that the same selection bias concerns apply to disputes filed in litigation and that "[t]hese various considerations warrant caution in drawing conclusions as to how well consumers or companies fare in arbitration as compared to litigation." *Id.* For example, the Study found that the disputes that parties filed in arbitration differ from the disputes filed in litigation. *Id.*

[235] *Id.*

[236] *Id.*, section 5 at 13.

[237] *Id.*

[238] *Id.*

[239] Of the 244 cases in which companies made claims or counterclaims that the Bureau could determine were resolved by arbitrators, companies obtained relief in 227 disputes. The total amount of relief in those cases was $2,806,662. These totals included 60 cases in which the company advanced fees for the consumer and obtained an award without participation by the consumer. Excluding those 60 cases, the total amount of relief awarded by arbitrators to companies was $2,017,486. *Id.*, section 5 at 12.

such cases.[240] With respect to disputes involving company claims, the Bureau could determine the terms of arbitrator awards relating to company claims in 244 of the 421 disputes involving company claims filed in 2010 and 2011.[241] Arbitrators provided companies some type of relief in 227, or 93.0 percent, of those disputes. In those 227 disputes, companies won a total of $2,806,662.[242]

The Study found that consumers appealed very few arbitration decisions and companies appealed none. Specifically, it found four arbitral appeals filed between 2010 and 2012. Consumers without counsel filed all four. Three of the four were closed after the parties failed to pay the required administrator fees and arbitrator deposits. In the fourth, a three-arbitrator panel upheld an arbitration award in favor of the company after a 15-month appeal process.[243]

The Study also found that very few class arbitrations were filed. The Study identified only two filed between 2010 and 2012. One was still pending on a motion to dismiss as of September 2014. The other file contained no information other than the arbitration demand that followed a State court decision granting the company's motion seeking arbitration.[244]

The Study also found that, when there was a decision on the merits by an arbitrator, the average time to resolution was 179 days, and the median time to resolution was 150 days. When the record definitively indicated that a case had settled, the median time to settlement was 155 days from the filing of the initial claim.[245] Further, the Study found that more than half of the filings that reached a decision were resolved by "desk arbitrations," meaning that the proceedings were resolved solely on the basis of documents submitted by the parties (57.8 percent). Approximately one-third (34.0 percent) of proceedings were resolved by an in-person hearing, 8.2 percent by telephonic hearings, and 2.4 percent through a dispositive motion with no hearing.[246] When there was an in-person hearing, the Study estimated that consumers travelled an average of 30 miles and a median of 15 miles to attend the hearing.[247]

Consumer Financial Litigation: Frequency and Outcomes (Section 6 of Study)

The Study's review of consumer financial litigation in court represents, the Bureau believes, the only analysis of the frequency and outcomes of consumer finance cases to date. While there is a large body of research regarding cases filed in court generally, preexisting studies of consumer finance cases either assessed only the number of filings—not typologies and outcomes, as the Study did—or focused on the frequency of cases filed under individual statutes.[248] The Study performed this analysis for individual court litigation concerning five of the same six product markets as those covered by its analysis of consumer financial arbitration: Credit cards, checking accounts and debit cards; payday loans; GPR prepaid cards; and private student loans. In addition, the study analyzed class cases filed in these five markets and also with respect to automobile loans. This analysis focused on cases filed from 2010 to 2012, as an analogue to the years for which electronic AAA records were available, and captured outcomes reflected on dockets through February 28, 2014.

The Bureau's class action litigation analysis extended to all Federal district courts. To conduct this analysis, the Bureau collected complaints concerning these six products using an electronic database of pleadings in Federal district courts.[249] The Bureau also reviewed Federal multidistrict litigation (MDL) proceedings to identify additional consumer financial complaints filed in Federal court. After the Bureau identified its set of Federal class complaints concerning the six products and individual complaints concerning the five products, it collected the docket sheet from the Federal district court in which the complaint was filed in order to analyze relevant case events. The Bureau also collected State court class action complaints from three States (Utah, Oklahoma, and New York) and seven counties that had a public electronic database in which complaints were regularly available.[250] The Bureau determined that it was feasible to collect class action complaints from the State and county databases, but not complaints in individual cases from those databases.[251] Collectively, this State court sample accounted for 18.1 percent of the U.S. population as of 2010.[252]

The Study's analysis of putative class action filings identified 562 cases filed by consumers from 2010 through 2012 in Federal courts and selected State courts concerning the six products, or about 187 per year.[253] Of these 562 putative class cases, 470 were filed in Federal court, and the remaining 92 were filed in the State courts in the Bureau's State court sample set.[254] In Federal court class cases, the most common claims were under the FDCPA and State UDAP statutes.[255] In State court class cases, State law claims predominated.[256] All Federal and State class cases sought monetary relief. Unlike the AAA arbitration rules, court rules of procedure generally do not require plaintiffs to identify specific claim amounts in their pleadings. Accordingly, the Bureau had limited ability to ascertain the number of "small" claims asserted in class action litigation, as compared to the 25 arbitration disputes each year in the markets analyzed in the AAA case set that included consumer affirmative claims of $1,000 or less.[257] The Bureau was able to determine, however, that more than a third of the 562 class cases sought statutory damages only under Federal statutes that cap damages available in class proceedings (sometimes accompanied by claims for actual damages). In addition, nearly 90 percent of the 562 class cases did not seek statutory damages under Federal statutes that do not cap damages available in class proceedings.[258]

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[240] *Id.*

[241] This includes cases filed by companies as well as cases in which companies asserted counterclaims in consumer-initiated disputes. *Id.*, section 5 at 14.

[242] *Id.*, section 5 at 43–44. Excluding 60 cases in which companies paid filing fees for consumers who failed to pay their initial fees—resulting in what appears to be decisions similar to default judgments—companies won a total of $2,017,486. *Id.* at 44.

[243] *Id.*, section 5 at 85.

[244] *Id.*, section 5 at 86–87.

[245] *Id.*, section 5 at 71–73.

[246] *Id.*, section 5 at 69–70.

[247] *Id.*, section 5 at 70–71.

[248] *See, e.g.*, Thomas E. Willging, Laural L. Hooper & Robert J. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules* (Fed. Judicial Ctr., 1996), *available at http://www.uscourts.gov/file/document/empirical-study-class-actions-four-federal-district-courts-final-report-advisory*; ACA International, *FDCPA Lawsuits Decline While FCRA and TCPA Filings Increase*, (reporting on January 2014 case filings under FDCPA as reported by Webrecon), *available at http://www.acainternational.org/news-fdcpa-lawsuits-decline-while-fcra-and-tcpa-filings-increase-31303.aspx, cited in* Study, *supra* note 2, section 6 at 9–11.

[249] LexisNexis CourtLink, *http://www.lexisnexis.com/en-us/products/courtlink-for-corporate-or-professionals.page.*

[250] To determine what counties to include in the data set, the Bureau started with the Census Bureau's list of the ten most populous U.S. counties. The Bureau then excluded the two counties on that list that were already included in the State court sample (two in New York City) and one additional county that did not have a public electronic database in which complaints were regularly available. The remaining seven counties were the counties in the Bureau's data set.

[251] Study, *supra* note 2, appendix L at 71.

[252] *Id.*, section 6 at 15; *see generally id.*, appendix L.

[253] *Id.*, section 6 at 6. Due to limitations of the electronic database coverage and searchability of State court pleadings, the Bureau does not believe the electronic search of U.S. District Court pleadings identified a meaningful set of complaints filed in State court and subsequently removed to Federal court. *Id.*, section 6 at 13.

[254] *Id.*, section 6 at 6. Because the Bureau's State sample accounted for about one-fifth of the U.S. population, the actual number of State class filings would have been higher, but the Bureau cannot say by how much. *Id.*

[255] *Id.*

[256] *Id.*

[257] *Id.*

As with the Study's analysis of the arbitration proceedings noted above, the Study set out a number of explicit and inherent limitations to its analysis of litigation outcomes.[259] While the available data indicated that most court cases were resolved by settlement or in a manner consistent with a settlement, the terms of any settlement were, for reasons noted previously, typically unavailable from the court record unless the settlement was on a class basis. The bulk of cases, therefore, including individual cases and cases filed as a class action but that settled on an individual basis only, resulted in unknown substantive outcomes.[260] Other limitations, however, were unique to the review of litigation filings. For instance, the lack of specific information about claim amounts in court filings meant that the Study was unable to offer a meaningful analysis of recovery rates.[261] Further, some cases in court often could not be reduced to a single result because plaintiffs in those cases may have alleged multiple claims against multiple defendants and one case can have multiple outcomes across the different claims and parties. For this reason, the Study reported on several types of outcomes, more than one of which may have occurred in any single case.[262] In addition, while the Bureau stated that its data set of State court complaints appears to be the most robust available, the Bureau noted the dataset's limitations. For example, the three states and seven additional counties from which we collected complaints filed in State court may not be representative of the consumer financial litigation filed in State courts nationwide.[263]

Outside of case outcomes, however, the Study noted that even comparing frequency or process across litigation and arbitration proceedings was of limited utility.[264] The Study noted that differences in data may result from decisions consumers and companies make pertaining to arbitration and litigation, including but not limited to whether a relationship would be governed by a pre-dispute arbitration agreement; whether a case is filed and if so on a class or individual basis; and whether to seek arbitration of cases filed in court.[265] With those caveats noted, the Study indicated that class filings result in myriad outcomes. Of the 562 class cases the Study identified, 12.3 percent (69 cases) had final class settlements approved by February 28, 2014.[266] As of April 2016, 18.1 percent of the filings (102 cases) featured final class settlements or class settlement agreements pending approval.

An additional 24.4 percent of the class cases (137 cases) involved a non-class settlement and 36.7 percent (206 cases) involved a potential non-class settlement.[267] In 10 percent of the class cases (56 cases), the action against at least one company defendant was dismissed as the result of a dispositive motion unrelated to arbitration.[268] In 8 percent of the 562 class cases (45 cases), all claims against a company were stayed or dismissed based on a company filing an arbitration motion.[269]

The Study also identified 3,462 individual cases filed in Federal court concerning the five product markets studied during the period, or 1,154 per year.[270] As with putative class filings, individual pleadings provide minimal information about the overall claim amounts sought by plaintiffs. Less than 6 percent of the overall individual litigation disputes were filed without counsel.[271]

The Bureau reviewed outcomes in all of the individual cases from four of the five markets studied and a random sample of the cases filed in the fifth market, resulting in an analysis of 1,205 cases.[272] In 48.2 percent of those 1,205 cases (581 cases), the record reflected that a settlement had occurred, though the record only rarely (in around 5 percent of those 581 cases) reflected the monetary or other relief afforded by the settlement. In 41.8 percent of the 1,205 cases (504 cases), the record reflected a withdrawal by at least one consumer or another outcome potentially consistent with settlement, such as a dismissal for failure to prosecute or failure to serve (but where the plaintiff also might have withdrawn with no relief). In 6.8 percent of the cases (82 cases), a consumer obtained a judgment against a company party through a summary judgment motion, a default judgment (most common), or, in two cases, a trial. In 3.7 percent of cases (44 cases), the action against at least one company was dismissed via a dispositive motion unrelated to arbitration.[273]

Individual cases generally resolved more quickly than class cases. Aside from cases that were transferred to MDLs, Federal class cases closed in a median of approximately 218 days for cases filed in 2010 and 211 days for cases filed in 2011. Class cases in MDLs were markedly slower, closing in a median of approximately 758 days for cases filed in 2010 and 538 days for cases filed in 2011. State class cases closed in a median of approximately 407 days for cases filed in 2010 and 255 days for cases filed in 2011.[274] Aside from a handful of individual cases transferred to MDL proceedings, individual Federal cases closed in a median of approximately 127 days.[275]

Notwithstanding the inherent limitations noted above, the Bureau's large set of individual and class action litigations allowed the Study to explore whether motions seeking to compel arbitration were more likely to be asserted in individual filings or in putative class action filings. Across its entire set of court filings, the Study found that motions seeking to compel arbitration were much more likely to be asserted in cases filed as class actions. For most of the cases analyzed in the Study, it was not apparent whether the defendants in the proceedings had the option of moving to seek arbitration proceedings (*i.e.,* the Bureau was unable to determine definitively whether the contracts between the consumers and defendants contained arbitration agreements). The Bureau, however, was able to limit its focus to complaints against companies that it knew to use arbitration agreements in their consumer contracts in the year in which the cases were filed by limiting its sample set to disputes regarding credit cards. In the 40 class cases where the Study was able to ascertain that the case was subject to an arbitration agreement, motions seeking arbitration were filed 65 percent of the time.[276] In a comparable set of 140 individual disputes, motions seeking arbitration were filed one tenth as often, in only 5.7 percent of proceedings.[277] Overall, the Study identified nearly 100 Federal and State class action filings that were dismissed or stayed because companies invoked arbitration agreements by filing a motion to compel and citing an arbitration agreement in support.[278]

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[258] *Id.*, section 6 at 22–26. The "capped" claims arose from five statutory schemes: The Expedited Funds Availability Act, EFTA, the FDCPA, TILA (including the Consumer Leasing Act and the Fair Credit Billing Act), and ECOA (which provides for punitive and actual damages but not statutory damages). *Id.*, section 6 at 23 n.45 (describing damages limitations). In over half of the cases in which Federal statutory damages were sought, the consumers also sought actual damages. *Id.*, section 6 at 25 n.48.

[259] *Id.*, section 6 at 2–5.

[260] *Id.*, section 6 at 8.

[261] *Id.*, section 6 at 3.

[262] *Id.*, section 6 at 3–4.

[263] *Id.*, section 6 at 15 n.34. *See also id.* at appendix L.

[264] *Id.*, section 6 at 4.

[265] *Id.*

[266] *Id.*, section 6 at 7.

[267] *Id.* The Bureau deemed cases to be potential non-class settlements where a named plaintiff withdrew claims or the court dismissed claims for failure to serve or failure to prosecute, which could have occurred due to a non-class settlement; but the record did not disclose that such a settlement occurred. Litigants generally do not have an obligation to disclose non-class settlements. In addition, they have certain incentives not to do so.

[268] *Id.*

[269] *Id.*

[270] *Id.*, section 6 at 27–28. As noted above, the Study did not include data on individual cases in State courts, and the Study evaluated Federal cases in five product markets.

[271] *Id.*, section 6 at 7.

[272] Because the 3,462 cases the Study identified contained a high proportion of credit card cases, the Bureau reviewed outcomes in a 13.3 percent sample of the credit card cases. *Id.*, section 6 at 27–28.

[273] *Id.*, section 6 at 48.

[274] *Id.*, section 6 at 9.

[275] *Id.*

Small Claims Court (Section 7 of Study)

As described above, Section 2 of the Study found that most arbitration agreements in the six markets the Bureau studied contained a small claims court "carve-out" that typically afforded either the consumer or both parties the right to file suit in small claims court as an alternative to arbitration. Commenters on the RFI urged the Bureau to study the use of small claims courts with respect to consumer financial disputes. The Bureau undertook this analysis, published the results of this inquiry in the Preliminary Results, and also included these results in Section 7 of the Study.

The Study's review of small claims court filings represents the only study of the incidence and typology of consumer financial disputes in small claims court to date. Prior research suggests that companies make greater use of small claims court than consumers and that most company-filed suits in small claims court are debt collection cases.[279] The Study, however, was the first to assess the frequency of small claims court filings concerning consumer financial disputes across multiple jurisdictions.

The Bureau obtained the data for this analysis from online small claims court databases operated by States and counties. No centralized repository of small claims court filings exists.[280] The Bureau identified 14 State databases that purport to provide statewide data and that can be searched by year and party name, although this also included the District of Columbia and a database for New York State that did not include New York City. This "State-level sample" covers approximately 52 million people. The Bureau also identified 17 counties with small claims court databases that met the same criteria (purporting to provide statewide data and being searchable by year and party name), including small claims courts for three of five counties in New York City. This "county-level sample" covers approximately 35 million people and largely avoids overlap with the State-level sample.[281] The Bureau searched each of these 31 jurisdictions' databases for cases involving a set of ten large credit card issuers that the Bureau estimated to cover approximately 80 percent of credit card balances outstanding.[282] The Bureau cross-referenced the issuers' advertising patterns to confirm that the issuers offered credit on a widespread basis to consumers in the jurisdictions the Bureau studied.[283]

The Study estimated that, in the jurisdictions the Bureau studied—with a combined population of approximately 85 million people—consumers filed no more than 870 disputes in 2012 against these ten institutions [284] (including the three largest retail banks in the United States).[285] This figure includes all cases in which an individual sued an issuer or a party with a name that a consumer might use to mean the issuer, without regard to whether the claim was consumer financial in nature.

As the Study noted, the number of claims brought by consumers that were consumer financial in nature was likely much lower. Out of the 31 jurisdictions studied, the Bureau was able to obtain underlying case documents on a systematic basis for only two jurisdictions: Alameda County and Philadelphia County. The Bureau's analysis of all cases filed by consumers against the credit card issuers in its sample found 39 such cases in Alameda County and four such cases in Philadelphia County. When the Bureau reviewed the actual pleadings, however, only four of the 39 Alameda cases were clearly individuals filing credit card claims against one of the ten issuers, and none of the four Philadelphia cases were situations where individuals were filing credit card claims against one of the ten issuers. This additional analysis shows that the Bureau's broad methodology likely significantly overstated the actual number of small claims court cases filed by consumers against credit card issuers.[286]

The Study also found that in small claims court credit card issuers were more likely to sue consumers than consumers were to sue issuers. The Study estimated that, in these same jurisdictions, issuers in the Bureau's sample filed over 41,000 cases against individuals.[287] Based on the available data, it is likely that nearly all these cases were debt collection claims.[288]

Class Action Settlements (Section 8 of Study)

Section 8 of the Study contains the results of the Bureau's quantitative assessment of consumer financial class action settlements. As described above, Section 6 of the Study, which analyzes consumer financial litigation, includes findings about the frequency with which consumer financial class actions are filed and the types of outcomes reached in such cases. However, the dataset used for that analysis consisted of cases filed between 2010 and 2012 and outcomes of those cases through February 28, 2014.

To better understand the results of consumer financial class actions that result in settlements, for Section 8, the Bureau conducted a search of class action settlements through an online database for Federal district court dockets. The Bureau searched this database using terms designed to identify final settlement orders finalized from 2008 to 2012 in consumer financial cases. The selection criteria for this data set differed from many other sections in the Study, in that it was not restricted to a discrete number of consumer financial products and services.[289] Rather, the Bureau reviewed these dockets and identified settlements where either: (1) The complaint alleged a violation of one of the enumerated consumer protection statutes under Title X of the Dodd-Frank Act; or (2) the plaintiffs were primarily consumers and the defendants were institutions selling consumer financial products or engaged in providing consumer financial services (other than consumer investment products and services), regardless of the basis of the claim. To the extent that the case involved *any* such consumer financial product or service—not only the six main product areas identified in the AAA and litigation sets—it was included in the data set.[290]

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[276] *Id.*, section 6 at 60–61. The court granted motions seeking arbitration in 61.5 percent of these disputes.

[277] *Id.*, section 6 at 61. The court granted motions seeking arbitration in five of the eight individual disputes in which motions seeking arbitration were filed (62.5 percent).

[278] *Id.*, section 6 at 58 (noting that companies moved to compel arbitration in 94 of the 562 class action cases in the Bureau's dataset, and that the motion was granted in full or in part in 46 cases); *id.* at 58–59 (noting that the Bureau confirmed that motions to compel arbitration were granted in at least 50 additional class cases using a methodology described in appendix P).

[279] As described in the Study, for example, a 1990 analysis of the Iowa small claims court system found that many more businesses sued individuals than individuals sued businesses. Suzanne E. Elwell & Christopher D. Carlson, *The Iowa Small Claims Court: An Empirical Analysis,* 75 Iowa L. Rev. 433 (1990). In 2007, a working group of Massachusetts trial court judges and administrators "recognized that a significant portion of small claims cases involve the collection of commercial debts from defendants who are not represented by counsel." Commonwealth of Massachusetts, District Court Department of the Trial Court, *Report of the Small Claims Working Group,* at 3 (Aug. 1, 2007), *available at http://www.mass.gov/courts/docs/lawlib/docs/smallclaimreport.pdf.*

[280] Study, *supra* note 2, section 7 at 5.

[281] *Id.*, section 7 at 5–6.

[282] *Id.*, section 7 at 6.

[283] Preliminary Results, *supra* note 2, at 156.

[284] Study, *supra* note 2, section 7 at 9.

[285] *Id.*, appendix Q at 120–21.

[286] *Id.*, section 7 at 8–9.

[287] *Id.*, section 1 at 16.

[288] *Id.*

The set of consumer financial class action settlements overlaps with the data set used for the analysis of the frequency and outcomes of consumer financial litigation (Section 6 of the Study) insofar as cases filed in 2010 through 2012 had settled by the end of 2012. The analysis of class action settlements is larger because it encompasses a wider time period (settlements finalized from 2008–12) to decrease the variance across years that could be created by unusually large settlements and to account for the impact of the April 2011 Supreme Court decision in *Concepcion,* which is discussed above.[291] The Bureau used this data set to perform a more detailed analysis of class settlement outcomes, including issues such as the number of class members eligible for relief in these settlements; the amount and types of relief available to class members; the number of class members who had received relief and the amount of that relief; and the extent to which relief went to attorneys. While several previous studies of class action settlements have been published, the Study is the first to comprehensively catalogue and analyze class action settlements specific to consumer financial markets.[292]

As the Study noted, there were limitations to the Bureau's analysis. The Study understates the number of class action settlements finalized, and the amount of relief provided, during the period under study because the Bureau could not identify class settlements in State court class action litigation. (The Bureau determined it was not feasible to do so in a systematic way.[293]) Further, the claims data on the settlements the Bureau identified is incomplete, as dockets are often closed when the final approved settlement order is issued, but final settlement orders may be issued in class action settlements before claims numbers are final.[294] In addition, not every settlement offered information on every data point or metric that was analyzed; the Study accounts for this by referencing, for every metric reported on, the number of settlements that provided the relevant number or estimate.[295]

The Bureau identified 422 Federal consumer financial class settlements that were approved between 2008 and 2012, resulting in an average of approximately 85 approved settlements per year.[296] The bulk of these settlements (89 percent) concerned debt collection, credit cards, checking accounts or credit reporting.[297] Of these 422 settlements, the Bureau was able to analyze 419.[298] The Bureau identified the class size or a class size estimate in 78.5 percent of these settlements (329 settlements). There were 350 million total class members in these settlements. Excluding one large settlement with 190 million class members (*In re TransUnion Privacy Litigation*),[299] these settlements included 160 million class members.[300]

These 419 settlements included cash relief, in-kind relief and other expenses that companies paid. The total amount of gross relief in these 419 settlements—that is, aggregate amounts promised to be made available to or for the benefit of damages classes as a whole, calculated before any fees or other costs were deducted—was about $2.7 billion.[301] This estimate included cash relief of about $2.05 billion and in-kind relief of about $644 million.[302] These figures represent a floor, as the Bureau did not include the value, or cost to the defendant, of making agreed behavioral changes to business practices.[303]

Sixty percent of the 419 settlements (251 settlements) contained enough data for the Bureau to calculate the value of cash relief that, as of the last document in the case files, either had been or was scheduled to be paid to class members. Based on these cases alone, the value of cash payments to class members was $1.1 billion. This excludes payment of in-kind relief and any valuation of behavioral relief.[304]

For 56 percent of the 419 settlements (236 settlements), the docket contained enough data for the Bureau to estimate, as of the date of the last filing in the case, the number of class members who were guaranteed cash payment because either they had submitted a claim or they were part of a class to which payments were to be made automatically. In these settlements, 34 million class members were guaranteed recovery as of the time of the last document available for review, having made claims or participated in an automatic distribution.[305] Of 382 settlements that offered cash relief, the Bureau determined that 36.6 percent included automatic cash distribution that did not require individual consumers to submit a claim form or claim request.[306]

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[289] Because Section 8 of the Study focused on settled class action disputes, the Bureau could begin its search with a relatively limited set of documents: All Federal class action settlements available on the Westlaw docket database, resulting in over 4,400 disputes settled between January 1, 2008 and December 31, 2012. *Id.*, appendix R. In contrast, in exploring filings in Federal and State court in Section 6 of the Study, described above, the volume of court filings required the Bureau to rely on word searches that helped limit the set of documents that the Bureau manually reviewed to the six product groups mentioned previously. *Id.*, appendix L.

[290] *Id.*, section 8 at 8–11. The Study did, however, exclude disputes involving residential mortgage lenders, where arbitration provisions are not prevalent, and another subset of disputes involving claims against defendants that are not "covered persons" regulated by the Bureau, such as claims against merchants under the Fair and Accurate Credit Transaction Act. *Id.*, section 8 at 9 n.25 and appendix S.

[291] *Concepcion,* 563 U.S. at 344.

[292] *See* Study, *supra* note 2, section 8 at 6–7.

[293] *Id.*, section 8 at 10.

[294] *Id.*, section 8 at 11.

[295] *Id.*, section 8 at 10.

[296] *Id.*, section 8 at 9.

[297] *Id.*, section 8 at 11.

[298] *Id.*, section 8 at 3 n.4. For the purposes of uniformity in analyzing data, the Bureau excluded three cases for which it was unable to find data on attorney's fees. These three cases would not have affected the results materially. *Id.*

[299] MDL No. 1350 (N.D. Ill. Sept. 17, 2008).

[300] Study, *supra* note 2, section 8 at 3.

[301] *Id.*, section 8 at 23–24. The Study defined gross relief as the total amount the defendants offered to provide in cash relief (including debt forbearance) or in-kind relief and offered to pay in fees and other expenses. *Id.*

[302] *Id.*, section 8 at 24.

[303] *Id.*, section 8 at 23. Accordingly, where cases did provide values for behavioral relief, such values were not included in the Study's calculations regarding attorney's fees as a proportion of consumer recovery. *Id.*, section 8 at 5 n.10.

[304] *Id.*, section 8 at 28.

[305] *Id.*, section 8 at 27. The value of cash payments to class members in the 251 settlements described above ($1.1 billion), divided by the number of class members in the 236 settlements described above (34 million), yields an average recovery figure of approximately $32 per class member. Since the publication of the Study, some stakeholders have reported on this $32 figure. *See, e.g.*, Todd Zywicki & Jason Johnston, *A Ban that Will Only Help Class Action Lawyers*, Mercatus Ctr., Geo. Mason Univ. blog (Mar. 18, 2016), *http://mercatus.org/expert_commentary/ban-will-only-help-class-action-lawyers*. The Bureau notes that this figure represents an approximation, because the set of 251 settlements for which the Bureau had payee information was not completely congruent with the set of 236 settlements for which the Bureau had payment information. However, the Bureau believes that this $32-per-class-member recovery figure is a reasonable estimate.

The Study also sought to calculate the rate at which consumers claimed relief when such a process was required to obtain relief. The Bureau was able to calculate the claims rate in 25.1 percent of the 419 settlements that contained enough data for the Bureau to calculate the value of cash relief that had been or was scheduled to be paid to class members (105 cases). In these cases, the average claims rate was 21 percent and the median claims rate was 8 percent.[307] Rates for these cases should be viewed as a floor, given that the claims numbers used to calculate these rates may not have been final for many of these settlements as of the date of the last document in the docket and available for review by the Bureau. The weighted average claims rate, excluding the cases providing for automatic relief, was 4 percent including the large *TransUnion* settlement, and 11 percent excluding that settlement.[308]

The Study also examined attorney's fee awards. Across all settlements that reported both fees and gross cash and in-kind relief, fee rates were 21 percent of cash relief and 16 percent of cash and in-kind relief. Here, too, the Study did not include any valuation for behavioral relief, even when courts relied on such valuations to support fee awards. The Bureau was able to compare fees to cash payments in 251 cases (or 60 percent of our data set). In these cases, of the total amount paid out in cash by defendants (both to class members and in attorney's fees), 24 percent was paid in fees.[309]

In addition, the Study includes a case study of *In re Checking Account Overdraft Litigation,* MDL 2036 (the Overdraft MDL)—a multi-district proceeding involving class actions against a number of banks—to shed further light on the impact of arbitration agreements on the resolution of individual and class claims. As of the Study's publication, 23 cases had been resolved in the Overdraft MDL. In eleven cases, the banks' deposit agreements did not include arbitration provisions; in those cases, 6.5 million consumers obtained $377 million in relief. In three cases, the defendants' deposit agreements had arbitration provisions, but the defendants did not seek arbitration; in those cases, 13.7 million consumers obtained $458 million in relief.[310] Another four defendants moved to seek arbitration, but ultimately settled; in those cases 8.8 million consumers obtained $180.5 million in relief.[311] Five companies, in contrast, successfully invoked arbitration agreements, resulting in the dismissal of the cases against them.[312]

The Overdraft MDL cases also provided useful insight into the extent to which consumers were able to obtain relief via informal dispute resolution—such as telephone calls to customer service representatives. As the Study notes, in 17 of the 18 Overdraft MDL settlements, the amount of the settlement relief was finalized, and the number of class members determined, after specific calculations by an expert witness who took into account the number and amount of fees that had already been reversed based on informal consumer complaints to customer service. The expert witness used data provided by the banks to calculate the amount of consumer harm on a per-consumer basis; the data showed, and the calculations reflected, informal reversals of overdraft charges. Even after controlling for these informal reversals, nearly $1 billion in relief was made available to more than 28 million class members in these MDL cases.[313]

Consumer Financial Class Actions and Public Enforcement (Section 9 of Study)

Section 9 of the Study explores the relationship between private consumer financial class actions and public (governmental) enforcement actions. As Section 9 notes, some industry trade association commenters (commenting on the RFI) urged the Bureau to study whether class actions are an efficient and cost-effective mechanism to ensure compliance with the law given the authority of public enforcement agencies. Specifically, these commenters suggested that the Bureau explore the percentage of class actions that are follow-on proceedings to government enforcement actions. Other stakeholders have argued that private class actions are needed to supplement public enforcement, given the limited resources of government agencies, and that private class actions may precede public enforcement and, in some cases, spur the government to action. To better understand the relationship between private class actions and public enforcement, Section 9 analyzes the extent to which private class actions overlap with government enforcement activity and, when they do overlap, which types of actions come first.

The Bureau obtained data for this analysis in two steps. First, it assembled a sample of public enforcement actions and searched for "overlapping" private class actions, meaning that the cases sought relief against the same defendants for the same conduct, regardless of the legal theory employed in the complaint at issue.[314] The Bureau did this by reviewing Web sites for all Federal regulatory agencies with jurisdiction over consumer finance matters and the Web sites of the State regulatory and enforcement agencies in the 10 largest and 10 smallest States and four county agencies in those States to identify reports on public enforcement activity over a period of five years.[315]

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[306] This set of 382 settlements represents the 410 settlements in which some form of cash relief was available, excluding 28 cases in which cash relief consisted solely of a *cy pres* payment or reward payment to the lead plaintiff(s), because, for class members, these cases involve neither automatic nor claims-made distributions. Study, *supra* note 2, section 8 at 19.

[307] Study, *supra* note 2, section 8 at 30.

[308] *Id.* Compared with the "average claims rate," which is merely the average of the claims rates in the relevant class actions, the "weighted average claims rate" factors in the relative size of the classes.

[309] *Id.,* section 8 at 35–36. These percentages likely represent ceilings on attorney's fee awards as a percentage of class payments, as they will fall as class members may have filed additional claims in the settlements after the Bureau's Study period ended.

[310] *Id.,* section 8 at 44. One of these three defendants, Bank of America, had an arbitration agreement in the applicable checking account contract, but, in 2009, began to issue checking account agreements without an arbitration agreement. Prior to the transfer of the litigation to the MDL, Bank of America moved to seek individual arbitration of the dispute; but once the litigation was transferred, Bank of America did not renew its motion seeking arbitration, instead listing arbitration as an affirmative defense. *See, e.g., id.,* section 8 at 41 n.59.

[311] *Id.,* section 8 at 45.

[312] *Id.,* section 8 at 42.

[313] *Id.,* section 8 at 39–46. The case record does not reveal how many consumers had received informal relief of some form. It is likely that many other class action settlements account for similar set-offs for consumers that received relief in informal dispute resolution, as settling defendants would have economic incentives to avoid double-compensating such plaintiffs.

[314] *Id.,* section 9 at 5 and appendix U at 141.

[315] The analysis included review of enforcement activity conducted by the Bureau, the FTC, the Department of Justice (specifically the Civil Division and the Civil Rights Division), the Department of Housing and Urban Development, the Office of the Comptroller of the Currency, the former Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the Federal Reserve Board of Governors, the National Credit Union Administration. It also included review of proceedings brought by State banking regulators, to the extent that they had independent enforcement authority, from Alaska, California, the District of Columbia, Florida, Georgia, Michigan, New York, Ohio, Pennsylvania, Rhode Island, Texas, and Vermont. And the review included State attorney general actions brought by California, Texas, New York, Florida, Illinois, Pennsylvania, Ohio, Georgia, Michigan, North Carolina, New Hampshire, Rhode Island, Montana, Delaware, South Dakota, Alaska, North Dakota, the District of Columbia, Vermont, and Wyoming. Finally, the analysis included consumer enforcement activity from city attorneys from Los Angeles, San Francisco, San Diego, and Santa Clara County. Study, *supra* note 2, appendix U at 141–42. *See supra* note 148 (noting that 41

The Bureau used this sample because it wanted to capture enforcement activity by both large and small States and because it wanted to capture enforcement activity by city attorneys, in light of the increasing work by city attorneys in this regard. The Bureau then searched an online database to identify overlapping private cases and searched the pleadings in those cases.[316]

Second, the Bureau essentially performed a similar search, but in reverse: The Bureau assembled a sample of private class actions and then searched for overlapping public enforcement actions. This sample of private class actions was derived from a sample of the class settlements used for Section 8 and a review of the Web sites of leading plaintiffs' class action law firms. To find overlapping public enforcement actions (typically posted on government agencies' Web sites), the Bureau searched online using keywords specific to the underlying private action.[317]

The Study found that, where the government brings an enforcement action, there is rarely an overlapping private class action. For 88 percent of the public enforcement actions the Bureau identified, the Bureau did not find an overlapping private class action.[318] The Study similarly found that, where private parties bring a class action, an overlapping government enforcement action exists in only a minority of cases, and rarely exists when the class action settlement is relatively small. For 68 percent of the private class actions the Bureau identified, the Bureau did not find an overlapping public enforcement action. For class action settlements of less than $10 million, the Bureau did not identify an overlapping public enforcement action 82 percent of the time.[319]

Finally, the Study found that, when public enforcement actions and class actions overlapped, private class actions tended to precede public enforcement actions instead of the reverse. When the Study began with government enforcement activity and identified overlapping private class actions, public enforcement activity was preceded by private activity 71 percent of the time. Likewise, when the Bureau began with private class actions and identified overlapping public enforcement activity, private class action complaints were preceded by public enforcement activity 36 percent of the time.[320]

Arbitration Agreements and Pricing (Section 10 of Study)

Section 10 of the Study contains the results of a quantitative analysis exploring whether arbitration agreements affect the price and availability of credit to consumers. Commenters on the Bureau's RFI suggested that the Bureau explore whether arbitration agreements lower the prices of financial services to consumers. In academic literature, some hypothesize that arbitration agreements reduce companies' dispute resolution costs and that companies "pass through" at least some cost savings to consumers in the form of lower prices, while others reject this notion.[321] However, as the Study notes, there is little empirical evidence to support either position.[322]

To address this gap in scholarship, the Study explored the effects of arbitration agreements on the price and availability of credit in the credit card marketplace following a series of settlements in *Ross* v. *Bank of America,* an antitrust case in which, among other things, several credit card issuers were alleged to have colluded to introduce arbitration agreements into their credit card contracts.[323] In these *Ross* settlements (separately negotiated from the settlements pertaining to the non-disclosure of currency conversion fees), certain credit card issuers agreed to remove arbitration agreements from their consumer credit card contracts for at least three and one-half years.[324] Using data from the CCDB,[325] the Bureau examined whether it could find statistically significant evidence, at standard confidence level (95 percent), that companies that removed their arbitration agreements raised their prices (measured by total cost of credit) in a manner that was different from that of comparable companies that did not remove their agreements. The Bureau was unable to identify any such evidence from the data.[326]

The Bureau performed a similar inquiry into whether affected companies altered the amount of credit they offered consumers, all else being equal, in a manner that was statistically different from that of comparable companies. The Study notes that this inquiry was subject to limitations not applicable to the price inquiry, such as the lack of a single metric to define credit availability.[327] Using two measures of credit offered, the Study did not find any statistically significant evidence that companies that eliminated arbitration provisions reduced the credit they offered.[328]

IV. Post-Study Outreach

A. Stakeholder Outreach Following the Study

As noted, the Bureau released the Arbitration Study in March 2015. After doing so, the Bureau held roundtables with key stakeholders and invited them to provide feedback on the Study and how the Bureau should interpret its results.[329] Stakeholders also provided feedback to the Bureau or published their own articles commenting on and responding to the Study. The Bureau has reviewed all of this correspondence and many of these articles in preparing this proposal.

B. Small Business Review Panel

In October 2015, the Bureau convened a Small Business Review Panel (SBREFA Panel) with the Chief Counsel for Advocacy of the Small Business Administration (SBA) and the Administrator of the Office of Information and Regulatory Affairs with the Office of Management and Budget

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FDIC enforcement actions were inadvertently omitted from the results published in Section 9 of the Study; that the corrected total number of enforcement actions reviewed in Section 9 was 1,191; and that other figures, including the identification of public enforcement cases with overlapping private actions, were not affected by this omission).

[316] Study, *supra* note 2, section 9 at 7.

[317] *Id.*, section 9 at 5–7.

[318] *Id.*, section 9 at 14.

[319] *Id.*, section 9 at 4.

[320] *Id.*, section 9 at 4.

[321] *Compare, e.g.*, Amy J. Schmitz, *Building Bridges to Remedies for Consumers in International eConflicts,* 34 U. Ark. L. Rev. 779, 779 (2012) ("[C]ompanies often include arbitration clauses in their contracts to cut dispute resolution costs and produce savings that they may pass on to consumers through lower prices.") *with* Jeffrey W. Stempel, *Arbitration, Unconscionability, and Equilibrium, The Return of Unconscionability Analysis as a Counterweight to Arbitration Formalism,* 19 Ohio St. J. on Disp. Resol. 757, 851 (2004) ("[T]here is nothing to suggest that vendors imposing arbitration clauses actually lower their prices in conjunction with using arbitration clauses in their contracts.").

[322] Study, *supra* note 2, section 10 at 5.

[323] *See* First Amended Class Action Complaint, *In re Currency Conversion Antitrust Litig.,* MDL No. 1409 (S.D.N.Y. June 4, 2009).

[324] Study, *supra* note 2, section 10 at 6.

[325] The CCDB provides loan-level information, stripped of direct personal identifiers, regarding consumer and small business credit card portfolios for a sample of large issuers, representing 85 to 90 percent of credit card industry balances. *Id.*, section 10 at 7–11.

[326] *See id.*, section 10 at 15. In the Study, the Bureau described several limitations of its model. For example, it is theoretically possible that the *Ross* settlers had characteristics that would make their pricing different after removal of the arbitration agreement, as compared to non-settlers. *See id.*, section 10 at 15–17.

[327] *Id.*

[328] *Id.*, section 10 at 15.

[329] As noted above, the Bureau similarly invited feedback from stakeholders on the Preliminary Report published in December 2013. In early 2014, the Bureau also held roundtables with stakeholders to discuss the Preliminary Report. *See supra* Parts III.A–III.C (summarizing the Bureau's outreach efforts in connection with the Study).

(OMB).[330] As part of this process, the Bureau prepared an outline of proposals under consideration and the alternatives considered (SBREFA Outline), which the Bureau posted on its Web site for review by the small financial institutions participating in the panel process, as well as the general public.[331] Working with stakeholders and the agencies, the Bureau identified 18 Small Entity Representatives (SERs) to provide input to the SBREFA Panel on the proposals under consideration. With respect to some markets, the relevant industry trade associations reported significant difficulty in identifying any small financial services companies that would be impacted by the approach described in the Bureau's SBREFA Outline.

Prior to formally meeting with the SERs, the Bureau held conference calls to introduce the SERs to the materials and to answer their questions. The SBREFA Panel then conducted a full-day outreach meeting with the small entity representatives in October 2015 in Washington, DC. The SBREFA Panel gathered information from the SERs at the meeting. Following the meeting, nine SERs submitted written comments to the Bureau. The SBREFA Panel then made findings and recommendations regarding the potential compliance costs and other impacts of the proposed rule on those entities. Those findings and recommendations are set forth in the Small Business Review Panel Report, which is being made part of the administrative record in this rulemaking.[332] The Bureau has carefully considered these findings and recommendations in preparing this proposal and addresses certain specific issues that concerned the Panel below.

C. Additional Stakeholder Outreach

At the same time that the Bureau conducted the SBREFA Panel, it met with other stakeholders to discuss the SBREFA Outline and the impacts analysis discussed in that outline. The Bureau convened several roundtable meetings with a variety of industry representatives—including national trade associations for depository banks and non-bank providers—and consumer advocates. Bureau staff also presented an overview at a public meeting of the Bureau's Consumer Advisory Board (CAB) and solicited feedback from the CAB on the proposals under consideration. The Bureau expects to meet with Indian tribes and engage in consultation pursuant to its Policy for Consultation with Tribal Governments after the release of this notice of proposed rulemaking. The Bureau specifically solicits comment on this proposal from Tribal governments.

V. Legal Authority

As discussed more fully below, there are two components to this proposal: A proposal to prohibit providers from the use of arbitration agreements to block class actions (as set forth in proposed § 1040.4(a)) and a proposal to require the submission to the Bureau of certain arbitral records (as set forth in proposed § 1040.4(b). The Bureau is issuing the first component of its proposal pursuant to its authority under section 1028(b) of the Dodd-Frank Act and is issuing the second component of its pursuant to its authority under that section and under sections 1022(b) and (c).

A. Section 1028

Section 1028(b) of the Dodd-Frank Act authorizes the Bureau to issue regulations that would "prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties," if doing so is "in the public interest and for the protection of consumers." Section 1028(b) also requires that "[t]he findings in such rule shall be consistent with the Study."

Section 1028(c) further instructs that the Bureau's authority under section 1028(b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen. Finally, Section 1028(d) provides that, notwithstanding any other provision of law, any regulation prescribed by the Bureau under section 1028(b) shall apply, consistent with the terms of the regulation, to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation, as established by the Bureau. As is discussed below in Part VI, the Bureau finds that its proposals relating to pre-dispute arbitration agreements fulfill all these statutory requirements and are in the public interest, for the protection of consumers, and consistent with the Bureau's Study.[333]

B. Sections 1022(b) and (c)

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof." Among other statutes, Title X of the Dodd-Frank Act is a Federal consumer financial law.[334] Accordingly, in proposing this rulemaking, the Bureau is proposing to exercise its authority under Dodd-Frank Act section 1022(b) to prescribe rules under Title X that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).[335]

Dodd-Frank section 1022(c)(1) provides that, to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services. The Bureau may make public such information obtained by the Bureau under this section as is in the public interest.[336] Moreover, section 1022(c)(4) of the Act provides that, in conducting such monitoring or assessments, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers. The Bureau proposes § 1040.4(b) pursuant to the Bureau's authority under Dodd-Frank section 1022(c), as well as its authority under Dodd-Frank section 1028(b).

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[330] The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), as amended by section 1100G(a) of the Dodd-Frank Act, requires the Bureau to convene a Small Business Review Panel before proposing a rule that may have a substantial economic impact on a significant number of small entities. *See* 5 U.S.C. 609(d).

[331] Bur. Of Consumer Fin. Prot., Outline of Proposals under Consideration for the SBREFA process (Oct. 7, 2015), available at *http://files.consumerfinance.gov/f/201510_cfpb_small-business-review-panel-packet-explaining-the-proposal-under-consideration.pdf.*; Bur. Of Consumer Fin. Prot., Press Release, *CFPB Considers Proposal to Ban Arbitration Clauses that Allow Companies to Avoid Accountability to Their Customers* (Oct. 7, 2015), *available at http://www.consumerfinance.gov/newsroom/cfpb-considers-proposal-to-ban-arbitration-clauses-that-allow-companies-to-avoid-accountability-to-their-customers/*. The Bureau also gathered feedback on the SBREFA Outline from other stakeholders and members of the public, and from the Bureau's Consumer Advisory Board (CAB). *See http://www.consumerfinance.gov/advisory-groups/advisory-groups-meeting-details/* Video of the Bureau's October 2015 presentation to the CAB is available at *https://www.youtube.com/watch?v=V11Xbp9z2KQ*.

[332] Bur. Of Consumer Fin. Prot., U.S. Small Bus. Admin. & Office of Mgmt. & Budget, *Final Report of the Small Business Review Panel on CFPB's Potential Rulemaking on Pre-Dispute Arbitration Agreements* (2015), *available at http://files.consumerfinance.gov/f/documents/CFPB_SBREFA_Panel_Report_on_Pre-Dispute_Arbitration_Agreements_FINAL.pdf* (hereinafter SBREFA Panel Report).

[333] *See infra* Part VI.

[334] *See* Dodd-Frank section 1002(14) (defining "Federal consumer financial law" to include the provisions of Title X of the Dodd-Frank Act).

[335] *See* Section 1022(b)(2) Analysis, *infra* Part V.B. (discussing the Bureau's standards for rulemaking under section 1022(b)(2) of the Dodd-Frank Act).

[336] Dodd-Frank section 1022(c)(3)(B).

VI. The Bureau's Preliminary Findings That the Proposal is in the Public Interest and for the Protection of Consumers

In this section, the Bureau sets forth how it interprets the requirements of Dodd-Frank section 1028(b) and why it preliminarily finds that the proposed rule (as set out more fully in proposed § 1040.4 and the Section-by-Section Analysis thereto) would be in the public interest and for the protection of consumers. The Bureau also identifies below why it believes that its proposal would be consistent with the Study. This section first explains the Bureau's interpretation of the legal standard, then discusses its application to the class proposal (proposed § 1040.4(a)) and the monitoring proposal (proposed § 1040.4(b)).

A. Relevant Legal Standard

As discussed above in Part V, Dodd-Frank section 1028(b) authorizes the Bureau to "prohibit or impose conditions or limitations on the use of" a pre-dispute arbitration agreement between covered persons and consumers if the Bureau finds that doing so "is in the public interest and for the protection of consumers." This requirement can be read as either a single integrated standard or as two separate tests (that a rule be both "in the public interest" and "for the protection of consumers"), and the Bureau must exercise its expertise to determine which reading best effectuates the purposes of the statute. As explained below, the Bureau is proposing to interpret the two phrases as related but conceptually distinct. The Bureau invites comment on this proposed interpretation, and specifically on whether "in the public interest" and "for the protection of consumers" should be interpreted as having independent meanings or as a single integrated standard.

The Dodd-Frank section 1028(b) statutory standard parallels the standard set forth in Dodd-Frank section 921(b), which authorizes the SEC to "prohibit or impose conditions or limitations on the use of" a pre-dispute arbitration agreement between investment advisers and their customers or clients if the SEC finds that doing so "is in the public interest and for the protection of investors." That language in turn parallels language in the Securities Act and the Exchange Act, which, for over 80 years, have authorized the SEC to adopt certain regulations or take certain actions if doing so is "in the public interest and for the protection of investors."[337] The SEC has routinely applied the Exchange Act language without delineating separate tests or definitions for the two phrases.[338] There is an underlying logic to such an approach since investors make up a substantial portion of "the public" whose interests the SEC is charged with advancing. This is even more true for section 1028, since nearly every member of the public is a consumer. Furthermore, in exercising its roles and responsibilities as the Consumer Financial Protection Bureau, the Bureau ordinarily approaches the idea of consumer protection holistically in accordance with the broad range of factors it generally considers under Title X of Dodd-Frank, which as discussed further below include systemic impacts and other public concerns. Therefore, if the Bureau were to treat the standard as a single, unitary test, the Bureau's analysis would encompass the public interest, as defined by the purposes and objectives of the Bureau and informed by the Bureau's particular expertise in the protection of consumers.

The Bureau believes, however, that treating the two phrases as separate tests may ensure a fuller consideration of all relevant factors. This approach would also be consistent with canons of construction that counsel in favor of giving the two statutory phrases discrete meaning notwithstanding the fact that the two phrases in section 1028(b)—"in the public interest" and "for the protection of consumers"—are inherently interrelated for the reasons discussed above.[339] Under this framework, the Bureau would be required to exercise its expertise to determine what each standard requires because both terms are ambiguous. In doing so, and as described in more detail below, the Bureau would look, using its expertise, to the purposes and objectives of Title X to inform the "public interest" prong,[340] while relying on its expertise in consumer protection to define the "consumer protection" prong.

Under this approach the Bureau believes that "for the protection of consumers" in the context of section 1028 should be read to focus specifically on the effects of a regulation in promoting compliance with laws applicable to consumer financial products and services and avoiding or preventing harm to the consumers who use or seek to use those products. In contrast, under this approach the Bureau would read section 1028(b)'s "in the public interest" prong, consistent with the purposes and objectives of Title X, to require consideration of the entire range of impacts on consumers and impacts on other elements of the public. These interests encompass not just the elements of consumer protection described above, but also secondary impacts on consumers such as effects on pricing, accessibility, and the availability of innovative products, as well as impacts on providers, markets, the rule of law and accountability, and other general systemic considerations.[341] The Bureau is proposing to adopt this interpretation, giving the two phrases independent meaning.[342]

The Bureau's interpretations of each phrase standing alone are informed by several considerations. As noted above, for instance, the Bureau would look to the purposes and objectives of Title X to inform the "public interest" prong. The Bureau's starting point in defining the public interest is therefore section 1021(a) of the Act, which describes the Bureau's purpose as follows: "The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive."[343] Similarly, section 1022 of the Act authorizes the Bureau to prescribe rules to "carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof" and provides that in doing so the Bureau shall consider "the potential benefits and costs" of a rule both "to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services." Section 1022 also directs the Bureau to consult with the appropriate Federal prudential regulators or other Federal agencies "regarding consistency with prudential, market, or systemic objectives administered by such agencies," and to respond in the course of rulemaking to any written objections filed by such agencies.[344] The Bureau interprets these purposes and requirements to reflect a recognition and expectation that the administration of consumer financial protection laws is integrated with the advancement of a range of other public goals such as fair competition, innovation, financial stability, the rule of law, and transparency.

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[337] *See, e.g.,* Securities Act of 1933, Public Law 73 22, section 3(b)(1) (1933) 15 U.S.C 77c(b)(1); Securities Exchange Act of 1934, Public Law 73 291, section 12(k)(1) (1934) 15 U.S.C. 78(k)(l).

[338] Under the Exchange Act, the SEC has often found that its actions are "for the protection of investors and in the public interest" without delineating separate standards or definitions for the two phrases. *See, e.g., In re: Bravo Enterprises Ltd.,* SE.C. Release No. 75775, Admin. Proc. No. 3–16292 at 6 (Aug. 27, 2015) (applying "the 'public interest' and 'protection of investors' standards" in light "of their breadth [and] supported by the structure of the Exchange Act and Section 12(k)(1)'s legislative history"). *See also* SEC Release No. 5627 (Oct. 14, 1975) ("Whether particular disclosure requirements are necessary to permit the Commission to discharge its obligations under the Securities Act and the Securities Exchange Act or are necessary or appropriate in the public interest or for the protection of investors involves a balancing of competing factors.").

[339] *See Hibbs* v. *Winn,* 542 U.S. 88, 101 (2004); *Bailey* v. *United States,* 516 U.S. 137, 146 (1995).

[340] This approach is also consistent with precedent holding that the statutory criterion of "public interest" should be interpreted in light of the purposes of the statute in which the standard is embedded. *See Nat'l Ass'n for Advancement of Colored People* v. *FPC,* 425 U.S. 662, 669 (1976).

[341] Treating consumer protection and public interest as two separate but overlapping criteria is consistent with the FCC's approach to a similar statutory requirement. *See Verizon* v. *FCC,* 770 F.3d 961, 964 (D.C. Cir. 2014).

[342] The Bureau believes that findings sufficient to meet the two tests explained here would also be sufficient to meet a unitary interpretation of the phrase "in the public interest and for the protection of consumers," because any set of findings that meets each of two independent criteria would necessarily meet a single test combining them.

Accordingly, the Bureau proposes to interpret the phrase "in the public interest" to condition any regulation on a finding that such regulation serves the public good based on an inquiry into the regulation's implications for the Bureau's purposes and objectives. This inquiry would require the Bureau to consider benefits and costs to consumers and firms, including the more direct consumer protection factors noted above, and general or systemic concerns with respect to the functioning of markets for consumer financial products or services, the broader economy, and the promotion of the rule of law and accountability.[345]

With respect to "the protection of consumers," as explained above, the Bureau ordinarily considers its roles and responsibilities as the Consumer [Financial] Protection Bureau to encompass attention to the full range of considerations relevant under Title X without separately delineating some as "in the public interest" and others as "for the protection of consumers." However, given that section 1028(b) pairs "the protection of consumers" with the "public interest," the latter of which the Bureau interprets to include the full range of considerations encompassed in Title X, the Bureau believes, based on its expertise, that "for the protection of consumers" should be read more narrowly. Specifically the Bureau believes "for the protection of consumers" should be read to focus on the effects of a regulation in promoting compliance with laws applicable to consumer financial products and services, and avoiding or preventing harm to consumers that may result from violations of those laws or other consumer rights.

The Bureau therefore proposes to interpret the phrase "for the protection of consumers" in section 1028—which relates specifically to arbitration agreements—to condition any regulation on a finding that such regulation would serve to deter and redress violations of the rights of consumers who are using or seek to use a consumer financial product or service. The focus under this prong of the test, as the Bureau is proposing to interpret it, would be exclusively on impacts on the level of compliance with relevant laws, including deterring violations of those laws, and on consumers' ability to obtain redress or relief. This would not include consideration of other benefits or costs or more general or systemic concerns with respect to the functioning of markets for consumer financial products or services or the broader economy. For instance, a regulation would be "for the protection of consumers" if it adopted direct requirements or augmented the impact of existing requirements to ensure that consumers receive "timely and understandable information" in the course of financial decision making, or to guard them from "unfair, deceptive, or abusive acts and practices and from discrimination."[346] The Bureau proposes to interpret the phrase "for the protection of consumers" as it is used in section 1028 as not in and of itself requiring the Bureau to consider more general or systemic concerns with respect to the functioning of the markets for consumer financial products or services or the broader economy,[347] which the Bureau will consider under the public interest prong.

As discussed above, the Bureau provisionally believes that giving separate consideration to the two prongs best ensures that the purpose of the statute is effectuated. This proposed interpretation would prevent the Bureau from acting solely based on more diffuse public interest benefits, absent a meaningful direct impact on consumer protection as described above. Likewise, the proposed interpretation would prevent the Bureau from issuing arbitration regulations that would undermine the public interest as defined by the full range of factors discussed above, despite some advancement of the protection of consumers.

The Bureau invites comment on its proposed interpretation of section 1028(b). The Bureau specifically invites comment on whether "in the public interest" and "for the protection of consumers" should be interpreted as having independent meaning and, if so, whether the Bureau's proposed interpretation of each effectuates the purpose of this provision. The Bureau also invites comments on whether a single, unitary standard would lead to a substantially different interpretation or application.[348]

B. Preliminary Factual Findings From the Study and the Bureau's Further Analysis

The Study provides a factual predicate for assessing whether particular proposals would be in the public interest and for the protection of consumers. This Part sets forth the preliminary factual findings that the Bureau has drawn from the Study and from the Bureau's additional analysis of arbitration agreements and their role in the resolution of disputes involving consumer financial products and services. The Bureau emphasizes that each of these findings is preliminary and subject to further consideration in light of the comments received and the Bureau's ongoing analysis. The Bureau invites comments on all aspects of the discussion of the factual findings that follows.

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[343] Section 1021(b) goes on to authorize the Bureau to exercise its authorities for the purposes of ensuring that, with respect to consumer financial products and services: (1) Consumers are provided with timely and understandable information to make responsible decisions about financial transactions; (2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; (3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; (4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

[344] Dodd-Frank sections 1022(b)(2)(B) and (C).

[345] The Bureau uses its expertise to balance competing interests, including how much weight to assign each policy factor or outcome.

[346] Dodd-Frank section 1021(b)(1) and (2).

[347] *See Whitman* v. *Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 465 (2001).

[348] As noted above, if the Bureau were to treat the standard as a single, unitary test, it would involve the same considerations as described above, while allowing for a more flexible balancing of the various considerations. The Bureau accordingly believes that findings sufficient to meet the two tests explained here would also be sufficient to meet a unitary test, because any set of findings that meets each of two independent criteria would necessarily meet a more flexible single test combining them.

The Bureau preliminarily concludes, consistent with the Study and based on its experience and expertise, that: (1) The evidence is inconclusive on whether individual arbitration conducted during the Study period is superior or inferior to individual litigation in terms of remediating consumer harm; (2) individual dispute resolution is insufficient as the sole mechanism available to consumers to enforce contracts and the laws applicable to consumer financial products and services; (3) class actions provide a more effective means of securing relief for large numbers of consumers affected by common legally questionable practices and for changing companies' potentially harmful behaviors; (4) arbitration agreements block many class action claims that are filed and discourage the filing of others; and (5) public enforcement does not obviate the need for a private class action mechanism.

A Comparison of the Relative Fairness and Efficiency of Individual Arbitration and Individual Litigation Is Inconclusive

The benefits and drawbacks of arbitration as a means of resolving consumer disputes have long been contested. The Bureau does not believe that, based on the evidence currently available to the Bureau, it can determine whether the mechanisms for the arbitration of individual disputes between consumers and providers of consumer financial products and services that existed during the Study period are more or less fair or efficient in resolving these disputes than leaving these disputes to the courts.[349]

The Bureau believes that the predominant administrator of consumer arbitration agreements is the AAA, which has adopted standards of conduct that govern the handling of disputes involving consumer financial products and services. The Study further showed that these disputes proceed relatively expeditiously, the cost to consumers of this mechanism is modest, and at least some consumers proceed without an attorney. The Study also showed that those consumers who do prevail in arbitration may obtain substantial individual awards—the average recovery by the 32 consumers who won judgments on their affirmative claims was nearly $5,400.[350]

At the same time, the Study showed that a large percentage of the relatively small number of AAA individual arbitration cases are initiated by the consumer financial product or service companies or jointly by companies and consumers in an effort to resolve debt disputes. The Study also showed that companies prevail more frequently on their claims than consumers[351] and that companies are almost always represented by attorneys. Finally, the Study showed that consumers prevailed and were awarded payment of their attorney's fees by companies in 14.4 percent of the 146 disputes resolved by arbitrators in which attorneys represented consumers, while companies prevailed and were awarded payment of their attorney's fees by consumers in 14.1 percent of 341 disputes resolved by arbitrators.[352]

Arbitration procedures are privately determined and can pose risks to consumers. For example, until it was effectively shut down by the Minnesota Attorney General, NAF was the predominant administrator for certain types of arbitrations. As set out in Part II.C above, NAF stopped conducting consumer arbitrations in response to allegations that its ownership structure gave rise to an institutional conflict of interest. The Study showed isolated instances of arbitration agreements containing provisions that, on their face, raise significant concerns about fairness to consumers similar to those raised by NAF, such as an agreement designating a tribal administrator that does not appear to exist and agreements specifying NAF as a provider even though NAF no longer handles consumer finance arbitration, making it difficult for consumers to resolve their claims.[353]

Individual Dispute Resolution Is Insufficient In Enforcing Laws Applicable to Consumer Financial Products and Services and Contracts

Whatever the relative merits of individual proceedings pursuant to an arbitration agreement compared to individual litigation, the Bureau preliminarily concludes, based upon the results of the Study, that individual dispute resolution mechanisms are an insufficient means of ensuring that consumer financial protection laws and consumer financial contracts are enforced.

The Study showed that consumers rarely pursue individual claims against their companies, based on its survey of the frequency of consumer claims, collectively across venues, in Federal courts, small claims courts, and arbitration. First, the Study showed that consumer-filed Federal court lawsuits are quite rare compared to the total number of consumers of financial products and services. As noted above, from 2010 to 2012, the Study showed that only 3,462 individual cases were filed in Federal court concerning the five product markets studied during the period, or 1,154 per year.[354] Second, the Study showed that relatively few consumers file claims against companies in small claims courts even though most arbitration agreements contain carve-outs permitting such court claims. In particular, as noted above, the Study estimated that, in the jurisdictions that the Bureau studied, which cover approximately 85 million people, there were only 870 small claims disputes in 2012 filed by an individual against any of the 10 largest credit card issuers, several of which are also among the largest banks in the

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[349] *See* Study, *supra* note 2, section 6 at 2–5 (explaining why "[c]omparing frequency, processes, or outcomes across litigation and arbitration is especially treacherous"). The Bureau did not study and is not evaluating post-dispute agreements to arbitrate between consumers and companies.

[350] *See id.*, section 5 at 41.

[351] *Id.*, section 5 at 39, 43. The Study did not suggest why companies prevail more often than consumers. While some stakeholders have suggested that arbitrators are biased—citing, for example, that companies are repeat players or often the party effectively chooses the arbitrator—other stakeholders and research suggests that companies prevail more often than consumers because of a difference in the relative merits of such cases.

[352] Study, *supra* note 2, section 5 at 79–80. Note that the number of attorney's fee requests was not recorded.

[353] *Id.*, section 2 at 35. On the issue of NAF, *see Wert* v. *ManorCare of Carlisle PA, LLC*, 124 A.2d 1248, 1250 (Pa. 2015) (affirming denial of motion to compel arbitration after finding arbitration agreement provision that named NAF as administrator as "integral and non-severable"); *but see Wright* v. *GGNSC Holdings LLC*, 808 N.W.2d 114, 123 (S.D. 2011) (designation of NAF as administrator was ancillary and arbitration could proceed before a substitute). On the issue of tribal administrators, *see Jackson* v. *Payday Financial, LLC*, 764 F.3d 765 (7th Cir. 2014) (refusing to compel arbitration because tribal arbitration procedure was "illusory").

[354] Study, *supra* note 2, section 6 at 27. As noted above, the Study did not include data on individual cases in State courts due to database limitations. One industry publication reports that litigation in court involving three consumer protection statutes occurs at a rate on the order of about 1,000 cases per month. WebRecon, LLC, *Out Like a Lion . . . Debt Collection Litigation & CFPB Complaint Statistics, Dec 2015 & Year in Review, available at http://webrecon.com/out-like-a-lion-debt-collection-litigation-cfpb-complaint-statistics-dec-2015-year-in-review/* (some cases included in this analysis would not be covered by the class proposal). Relatedly, some critics of the Study contend that the number of Federal court individual cases is low because Federal court litigation is complex and consumers need an attorney to proceed. Whatever the reason, even fewer consumers pursue claims in arbitration. *See* Study, *supra* note 2, section 5 at 19.

United States.[355] Extrapolating those results to the population of the United States suggests that, at most, a few thousand cases at most are filed per year in small claims court by consumers concerning consumer financial products or services.

A similarly small number of consumers file consumer financial claims in arbitration. The Study shows that from the beginning of 2010 to the end of 2012 consumers filed 1,234 individual arbitrations with the AAA, or about 400 per year across the six markets studied.[356] Given that the AAA was the predominant administrator identified in the arbitration agreements studied, the Bureau believes that this represents substantially all consumer finance arbitration disputes that were filed during the Study period. Similarly, JAMS (the second largest provider of consumer finance arbitration[357]) has reported to Bureau staff that it handled about 115 consumer finance arbitrations in 2015.

Collectively, as set out in the Study, the number of all individual claims filed by consumers in individual arbitration, individual litigation in Federal court, or small claims court is relatively low in the markets analyzed in the Study compared to the hundreds of millions of consumers of various types of financial products and services.[358] The Bureau believes that the relatively low numbers of formal individual claims may be explained, at least in part, by the fact that legal harms are often difficult for consumers to detect without the assistance of an attorney. For example, some harms, by their nature, such as discrimination or non-disclosure of fees, can only be discovered and proved by reference to how a company treats many individuals or by reference to information possessed only by the company, not the consumer.[359] Individual dispute resolution requires a consumer to recognize his or her own right to seek redress for any harm the consumer has suffered or otherwise to seek a dispensation from the company.

The Bureau also believes that the relatively low number of formally filed individual claims may be explained by the low monetary value of the claims that are often at issue.[360] Claims involving products and services that would be covered by the proposed rule often involve small amounts. When claims are for small amounts, there may not be significant incentives to pursue them on an individual basis. As one prominent jurist has noted, "Only a lunatic or a fanatic sues for $30."[361] In other words, it is impractical for the typical consumer to incur the time and expense of bringing a formal claim over a relatively small amount of money, even without a lawyer. Congress and the Federal courts developed procedures for class litigation in part because "the amounts at stake for individuals may be so small that separate suits would be impracticable."[362] Indeed, the Supreme Court has explained that:

> [t]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her own rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.[363]

The Study's survey of consumers in the credit card market reflects this dynamic. Very few consumers said they would pursue a legal claim if they could not get what they believed were unjustified or unexplained fees reversed by contacting a company's customer service department.[364]

Even when consumers are inclined to pursue individual claims, finding attorneys to represent them can be challenging. Attorney's fees for an individual claim can easily exceed expected individual recovery.[365] A consumer must pay his or her attorney in advance or as the work is performed unless the attorney is willing to take a case on contingency—a fee arrangement where an attorney is paid as a percentage of recovery, if any—or rely on an award of defendant-paid attorney's fees, which are available under many consumer financial statutes. Attorneys for consumers often are unwilling to rely on either contingency-based fees or statutory attorney's fees because in each instance the attorney's fee is only available if the consumer prevails on his or her claim (which always is at least somewhat uncertain). Consumers may receive free or reduced-fee legal services from legal services organizations, but these organizations frequently are unable to provide assistance to many consumers because of the high demand for their services and limited resources.[366]

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[355] The figure of 870 claims includes all cases in which an individual sued a credit card issuer, without regard to whether the claim itself was consumer financial in nature. As the Study noted, the number of claims brought by consumers that were consumer financial in nature was likely much lower. Additionally, the Study cross-referenced its sample of small claims court filings with estimated annual volume for credit card direct mail using data from a commercial provider. The volume numbers showed that issuers collectively had a significant presence in each jurisdiction, at least from a marketing perspective. *See* Study, *supra* note 2, appendix Q at 113–14.

[356] *See id.* and section 5 at 19. Of the 1,234 consumer-initiated arbitrations, 565 involved affirmative claims only by the consumer with no dispute of alleged debt; another 539 consumer filings involved a combination of an affirmative consumer claim and disputed debt. *Id.*, section 5 at 31. This equates to 1,104 filings (out of 1,234), or 368 per year, in which the consumer asserted an affirmative claim at all. *Id.* In 737 claims filed by either party (or just 124 consumer filings), the only action taken by the consumer was to dispute the alleged debt. *Id.* Another 175 were mutually filed by consumers and companies. *Id.*, section 5 at 19.

[357] *Id.*, section 4 at 2.

[358] For instance, at the end of 2015, there were 600 million consumer credit card accounts, based on the total number of loans outstanding from Experian & Oliver Wyman Market Intelligence Reports. Experian & Oliver Wyman, *2015 Q4 Experian—Oliver Wyman Market Intelligence Report: Bank Cards Report*, at 1–2 (2015) and Experian & Oliver Wyman, *2015 Q4 Experian—Oliver Wyman Market Intelligence Report: Retail Lines*, at 1–2 (2015). In the market for consumer deposits, one of the top checking account issuers serviced 30 million customer accounts (JPMorgan Chase Co., Inc., 2010 Annual Report, at 36) and in the Overdraft MDL settlements, 29 million consumers with checking accounts were eligible for relief. Study, *supra* note 2, section 8 at 40.

[359] For example, proving a claim of lending discrimination in violation of ECOA typically requires a showing of disparate treatment or disparate impact, which require comparative proof that members of a protected group were treated or impacted worse than members of another group. U.S. Dep't of Housing & Urban Dev., Policy Statement on Discrimination in Lending, 59 FR 18266, 18268 (Apr. 15, 1994). Evidence of overt discrimination can also prove a claim of discrimination under ECOA but such proof is very rare and thus such claims are typically proven through showing disparate treatment or impact. *See Cherry* v. *Amoco Oil Co.*, 490 F. Supp. 1026, 1030 (N.D. Ga. 1980). Systemic overcharges may also be difficult to resolve on an individual basis. *See, e.g.*, Stipulation and Agreement of Settlement at 30, *In re Currency Conversion Fee Multidistrict Litigation*, MDL 1409 (S.D.N.Y. July 20, 2006) (noting that the plaintiffs class allegations that the network and bank defendants "inter alia . . . have conspired, have market power, and/or have engaged in Embedding, otherwise concealed and/or not adequately disclosed the pricing and nature of their Foreign Transaction procedures; and, as a result, holders of Credit Cards and Debit Cards have been overcharged and are threatened with future harm.").

[360] One indicator of the relative size of consumer injuries in consumer finance cases is the amount of relief provided by financial institutions in connection with complaints submitted through the Bureau's complaint process. In 2015, approximately 6 percent of company responses to complaints for which the company reported providing monetary relief (approximately 9,730 complaints) were closed "with monetary relief" for a median amount of $134 provided per consumer complaint. *See* Bureau of Consumer Fin. Prot., *Consumer Response Annual Report* (2016) *available at http://files.consumerfinance.gov/f/201604_cfpb_consumer-response-annual-report-2015.pdf.* The Bureau's complaint process and informal dispute resolution mechanisms at other agencies do not adjudicate claims; instead, they provide an avenue through which a consumer can complain to a provider. Complaints submitted to the Bureau benefit the public and the financial marketplace by informing the Bureau's work; however, the Bureau's complaint system is not a substitute for consumers' rights to bring formal disputes, and relief is not guaranteed.

[361] *Carnegie* v. *Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004).

[362] 1966 Adv. Comm. Notes, 28 U.S.C. App. 161.

[363] *Amchem Prod.*, 521 U.S. at 617 (citing *Mace* v. *Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997)).

[364] Just 2.1 percent of respondents said that they would have sought legal advice or would have sued with or without an attorney for unrecognized fees on a credit card statement. Study, *supra* note 2, section 3 at 17–18. Similarly, many financial services companies opt not to pursue small claims against consumers; for example, these providers do not actively collect on small debts because it is not worth their time and expense given the small amounts at issue and their low likelihood of recovery.

[365] For instance, in the Study's analysis of individual arbitrations, the average and median recoveries by consumers winning awards on their affirmative claims were $5,505 and $2,578, respectively. Study, *supra* note 2, section 5 at 39. By way of comparison (attorney's fees data limited to successful affirmative consumer claims was not reported in the Study), the average and median consumer attorney's fees awards were $8,148 and $4,800, respectively, across cases involving judgments favoring consumers involving affirmative relief or disputed debt relief. *Id.*, section 5 at 79. Note that the Study did not address the number of cases in which attorney's fees were requested by the consumer. *Id.*

For all of these reasons, the Bureau preliminarily finds that the relatively small number of arbitration, small claims, and Federal court cases reflects the insufficiency of individual dispute resolution mechanisms alone to enforce effectively the law for all consumers of a particular provider, including Federal consumer protection laws and consumer finance contracts.

Some stakeholders claim that the low total volume of individual claims, in litigation or arbitration, found by the Study is attributable not to inherent deficiencies in the individual dispute resolution systems but rather to the success of informal dispute resolution mechanisms in resolving consumers' complaints. On this theory, the cases that actually are litigated or arbitrated are outliers—consumer disputes in which the consumer either bypassed the informal dispute resolution system or the system somehow failed to produce a resolution. The Bureau does not find this argument persuasive.

The Bureau understands that when an individual consumer complains about a particular charge or other practice, it is often in the financial institution's interest to provide the individual with a response explaining that charge and, in some cases, a full or partial refund or reversal of the practice, in order to preserve the customer relationship.[367] But, as already noted, many consumers may not be aware that a company is behaving in a particular way, let alone that the company's conduct is unlawful. Thus, an informal dispute resolution system is unlikely to provide relief to all consumers who are adversely affected by a particular practice. Indeed, the Bureau has observed that most of its enforcement actions deliver relief to consumers who have not received it already through informal dispute resolution.

Moreover, even where consumers do make complaints informally, the outcome of these disputes may be unrelated to the underlying merits of the claim.[368] Nothing requires a company to resolve a dispute in a particular consumer's favor, to award complete relief to that consumer, to decide the same dispute in the same way for all consumers, or to reimburse consumers who had not raised their dispute to a company. Regardless of the merits of or similarities between the complaints, the company retains discretion to decide how to resolve them. For example, if two consumers bring the same dispute to a company, the company might resolve the dispute in favor of a consumer who is a source of significant profit while it might reach a different resolution for a less profitable consumer.[369] Indeed, in the Bureau's experience it is quite common for financial institutions (especially the larger ones that interact with the greatest number of consumers) to maintain profitability scores on each customer and to cabin the discretion of customer service representatives to make adjustments on behalf of complaining consumers based on such scores.[370]

The example of overdraft reordering, which was included in the Study's discussion of the Overdraft MDL, provides an example of the limitations of informal dispute resolution and the important role of class litigation in more effectively resolving consumers' disputes.[371] In the cases included in the MDL, certain customers lodged informal complaints with banks about the overdraft fees. The subsequent litigation revealed that banks had been reordering transactions from chronological order to an order based on highest to lowest amount to maximize the number of overdraft fees. As far as the Bureau is aware, these informal complaints, while resulting in some refunds to the relatively small number of consumers who complained, produced no changes in the bank practices in dispute. Ultimately, after taking into account the relief that consumers had obtained informally, 29 million bank customers received cash relief in court settlements because they did not receive relief through internal dispute resolution processes.[372]

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[366] There is a large unmet need for legal services for low-income individuals who want legal help in consumer cases. By one estimate, roughly 130,000 consumers (for all goods, not just financial products or services) were turned away because the legal aid service providers serving low-income individuals did not have enough staff or capacity to help. *See* Legal Services Corp., *Documenting the Justice Gap In America,* at 7 (2007), *available at http://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf. See also* Helynn Stephens, *Price of Pro Bono Representations: Examining Lawyers' Duties and Responsibilities,* 71 Def. Counsel J. 71 (2004) ("Legal services programs are able to assist less than a fifth of those in need.").

[367] This is true, of course, only to the extent that consumers have a choice of financial service providers. The Bureau notes that consumers do not have such a choice in some important consumer financial markets, including in markets where servicing or debt collection is outsourced by a creditor and the consumer typically does not have the ability to choose a different servicer or debt collector.

[368] Commentators have advised that concerns other than whether a violation occurred should be considered when resolving complaints. *See, e.g.,* Claes Fornell & Birger Wernerfelt, *Defensive Marketing Strategy by Customer Complaint Management: A Theoretical Analysis,* 24 J. of Marketing Res. 337, 339 (1987) ("[W]e show that by attracting and resolving complaints, the firm can defend against competitive advertising and lower the cost of offensive marketing without losing market share."); Mike George, Cosmo Graham & Linda Lennard, *Complaint Handling: Principles and Best Practice* at 6 (2007) (discussing research that shows that customers who complain are more likely to re-purchase the good or service than those who do not and noting that additional research that shows that good complaints culture and processes may well lead to improved financial performance), *available at https://www2.le.ac.uk/departments/law/research/cces/documents/Complainthandling-PrinciplesandBestPractice-April2007_000.pdf.*

[369] One study showed that one bank refunded the same fee at varying rates depending on the branch location that a consumer visited. Jason S. Johnston & Todd Zywicki, *The Consumer Financial Protection Bureau's Arbitration Study: A Summary And Critique* (Mercatus Center 2015), *http://mercatus.org/publication/consumer-financial-protection-bureau-arbitration-study-summary-critique* (explaining that the process undertaken by one bank in 2014 "resulted in its refunding 94 percent of wire transfer fees that customers complained about at its San Antonio office and 75 percent of wire transfer fees that customers complained about at its Brownsville office. During that same period, the bank responded to complaints about inactive account fees by making refunds 74 percent of the time in San Antonio but only 56 percent of the time in Houston."). The study does not provide information on how many of the bank's customers complained or why some customers were successful in receiving refunds while others were not.

[370] *See, e.g.,* Rick Brooks, *Banks and Others Base Their Service On Their Most-Profitable Customers,* Wall St. J. (Jan. 7, 1999), *available at http://www.wsj.com/articles/SB915601737138299000* (explaining how some banks will treat profitable customers differently from unprofitable ones and citing examples of banks using systems to routinely allow customer service representatives to deny fee refund and other requests from unprofitable customers while granting those from profitable customers).

[371] Study, *supra* note 2, section 8 at 39–46.

[372] In total, 18 banks paid $1 billion in settlement relief to over 29 million consumers. Study, *supra* note 2, section 8 at 43–46 (explaining how the settlements were distributed). These settlement figures were net of any payments made to consumers via informal dispute resolution; an expert witness calculated the sum of fees attributable to the overdraft reordering practice and subtracted all refunds paid to complaining

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Thus, while informal dispute resolution systems may provide some relief to some consumers—and while some stakeholders have argued that arbitration agreements may even enhance the incentives that companies have to resolve those informal disputes that do arise on a case-by-case basis—the Bureau preliminarily finds that these systems alone are inadequate mechanisms to resolve potential violations of the law that broadly apply to many or all customers of a particular company for a given product or service.

The Bureau's experience and expertise includes fielding consumer complaints, supervising a vast array of markets for consumer financial products and services, and enforcing Federal consumer financial laws. Based on this experience and expertise, the Bureau believes that even though systemic factors may discourage individual consumers from filing small claims, the ability of consumers to pursue these claims is important. Based on its experience and expertise, the Bureau preliminarily finds that small claims can reflect significant aggregate harms when the potentially illegal practices affect many consumers, and, more generally, the market for consumer financial products and services. For example, a single improper overdraft fee may only "cost" a consumer $35, but if that fee is charged to tens of thousands of consumers, it can have a substantial impact on both the consumers on whom such fees are imposed and the profits of the company retaining the fees.[373] When all or most providers engage in a similar practice, the market for that product or service is significantly impacted.

Class Actions Provide a More Effective Means of Securing Significant Consumer Relief and Changing Companies' Potentially Illegal Behavior

The Bureau preliminarily finds, based on the results of the Study and its further analysis, that the class action procedure provides an important mechanism to remedy consumer harm. The Study showed that class action settlements are a more effective means through which large numbers of consumers are able to obtain monetary and injunctive relief in a single case.

In the five-year period studied, 419 Federal consumer finance class actions reached final class settlements. These settlements involved, conservatively, about 160 million consumers and about $2.7 billion in gross relief of which, after subtracting fees and costs, $2.2 billion was available to be paid to consumers in cash relief or in-kind relief.[374] Further, as set out in the Study, nearly 24 million class members in 137 settlements received automatic distributions of class settlements, meaning they received payments without having to file claims.[375] In the five years studied, at least 34 million consumers received $1.1 billion in actual or guaranteed payments.[376] In addition to the monetary relief awarded in class settlements, consumers also received non-monetary relief from those settlements. Specifically, the Study showed that there were 53 settlements covering 106 million class members that mandated behavioral relief that required changes in the settling companies' business practices. The Bureau preliminarily finds, based on its experience and expertise—including its review and monitoring of these settlements and its enforcement of Federal consumer financial law through both litigation and supervisory actions—that behavioral relief could be, when provided, at least as important for consumers as monetary relief. Indeed, prospective relief can provide more relief to affected consumers, and for a longer period, than retrospective relief because a settlement period is limited (and provides a fixed amount of cash relief), whereas injunctive relief lasts for years or may be permanent.

The Bureau further preliminarily finds that, based on its experience and expertise, class action settlements also benefit consumers not included in a particular class settlement because, as a result of a class settlement, companies frequently change their practices in ways that benefit consumers who are not members of the class. In resolving a class action, many companies stop potentially illegal practices either as part of the settlement or because the class action itself informed them of a potential violation of law and of the risk of future liability if they continued the conduct in question. Any consumer impacted by that practice—whether or not the consumer is in a particular class—would benefit from an enterprise-wide change. For example, if a class settlement only involved consumers who had previously purchased a product, a change in conduct by the company might benefit consumers who were not included in the class settlement but who purchase the product or service in the future.

One example of this appears to have occurred with respect to overdraft practices. In *Gutierrez* v. *Wells Fargo*, the court ruled that certain Wells Fargo overdraft practices were illegal.[377] Although that judgment was limited to a California class of Wells consumers, Wells thereafter appears to have also changed its overdraft practices in other jurisdictions in the United States.[378] Similarly, the Bureau bases this preliminary finding on its understanding of the important benefits

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consumers. The net amount was the baseline from which settlement payments were negotiated. *See id.*, section 8 at 45 n.61 & 46 n.63.

[373] For example, in *Gutierrez* v. *Wells Fargo Bank, N.A.*, the court explained that the defendant bank's own documents established that it stood to make $40 million more per year from overdraft fees by reordering transaction high-to-low rather than chronologically. *See Gutierrez* v. *Wells Fargo Bank, N.A.*, 730 F. Supp. 2d 1080, 1097 (N.D. Cal. 2010). For further procedural history for *Gutierrez, see infra* note 377.

[374] The number of consumers (160 million) obtaining relief in class settlements excludes a single settlement that involved a class of 190 million consumers. Study, *supra* note 2, section 8 at 15. Section 8 of the Study, on Federal class action settlements, covered a wider range of products than the analysis of individual arbitrations in Section 5 of the Study, which was limited to credit cards, checking/debit cards, payday and similar loans, general purpose reloadable prepaid cards, private student loans, and auto purchase loans. *Id.*, section 5 at 17–18. If the class settlement results were narrowed to the six product markets covered in Section 5, the Study would have identified $1.8 billion in total relief ($1.79 billion in cash and $9.4 million of in-kind relief), or $360 million per year, covering 78.8 million total class members, or 15.8 million members per year.

[375] *Id.*, section 8 at 27.

[376] As noted above, *see supra* note 369 and accompanying text, researchers have calculated that, on average, each consumer that received monetary relief during the period studied received $32. Because the settlements providing data on payments (a figure defined in the Study, *supra* note 2, section 8 at 4–5 n.9, to include relief provided by automatic distributions or actually claimed by class members in claims made processes) to class members did not overlap completely with the settlements providing data on the number of class members receiving payments, this calculation is incorrect. Nonetheless, the Bureau believes that it is a roughly accurate approximation.

[377] The original bench trial awarded "a certified class of California depositors" both cash and injunctive relief based on violations of California law. *Gutierrez* v. *Wells Fargo Bank, N.A.*, 730 F. Supp. 2d 1080, 1082 (N.D. Cal. 2010). The Ninth Circuit reversed part of the judgment on the basis that the some parts of California law—as applied to overdraft reordering practices—were preempted by the National Bank Act, and remanded to the district court for it to determine if relief could still be granted under the parts of California law that were not preempted. 704 F.3d 712, 730 (9th Cir. 2012). Upon remand, the district court reinstated the judgment, including restitution and injunctive relief. 944 F. Supp. 2d 819 (N.D. Cal. 2013). The Ninth Circuit upheld parts of the reinstated judgment, permitting a judgment against Wells and upholding the award of restitution, but vacating for the grant of injunctive relief as overly broad. 589 Fed. Appx. 824 (9th Cir. Oct. 29, 2014), *cert. denied*,—S.Ct.—, 2016 WL 1278632 (Apr. 4, 2016).

[378] *See* Danielle Douglas-Gabriel, *Big banks have been gaming your overdraft fees to charge you more money*, Wash. Post Wonkblog (July 17, 2014), *https://www.washingtonpost.com/news/wonk/wp/2014/07/17/wells-fargo-to-make-changes-to-protect-customers-from-overdraft-fees/* ("Half of the country's big banks play this game, but one has decided to stop: Wells Fargo. Starting in August, the bank will process customers' checks in the order in which they are received, as it already does with debit card purchases and ATM withdrawals.").

gained by consumers through behavioral changes companies agree to make that benefit both existing customers and future customers. This is, for example, why the Bureau frequently tries to secure such behavioral relief from companies through its own enforcement actions. Although the value of these behavioral changes (and those, not considered behavioral relief in the Study, where companies simply agree to comply with the law going forward) are typically not quantified in case records, the Bureau believes their value to consumers are significant.[379]

The Bureau has considered stakeholder arguments that class actions are not effective at securing relief and behavior changes for large numbers of consumers because the Study showed that about three-fifths of cases filed as seeking class treatment are resolved through voluntary individual settlements (or an outcome consistent with a voluntary individual settlement).[380] The Bureau believes, however, that the best measure of the effectiveness of class actions for all consumers is the absolute relief they provide, and not the proportion of putative class cases that result in individual settlements or potential individual settlements. The fact that many cases filed as putative class cases do not result in class relief does not change the significance of that relief in the cases that do provide it. Moreover, when a named plaintiff agrees in a putative class action to an individual settlement, by rule it occurs before certification of a class, and thus does not prevent other consumers from resolving similar claims, including by filing their own class actions. The Bureau believes that, beyond the named plaintiff, an individual settlement of a class case does not bind other consumers or affect their right to pursue their claims; in this sense they are no worse off than if the individually settled case had never been filed at all. Accordingly, the Bureau believes it more appropriate to evaluate class actions based on the magnitude of relief that these cases, collectively (including the many that do result in class settlements) deliver to consumers.[381] Thus, the Bureau preliminarily finds that the concerns raised by stakeholders regarding the predominance of individual outcomes in cases filed as putative class cases are not substantial enough for the Bureau to find that the class proposal would be ineffective in providing consumer relief.

For these reasons, the Bureau preliminarily finds that the class action mechanism is a more effective means of providing relief to consumers for violations of law or contract affecting groups of consumers than other mechanisms available to consumers, such as individual formal adjudication (either through judicial or arbitral fora) or informal efforts to resolve disputes.

Arbitration Agreements Block Some Class Action Claims and Suppress the Filing of Others

The Bureau preliminarily finds, based upon the results of the Study, that arbitration agreements have the effect of blocking a significant portion of class action claims that are filed and of suppressing the filing of others.

As noted above in Part III, the Study showed that arbitration agreements are widespread in consumer financial markets and hundreds of millions of consumers use consumer financial products or services that are subject to arbitration agreements. Arbitration agreements give companies that offer or provide consumer financial products and services the contractual right to block the filing of class actions in both court and arbitration. When a plaintiff files a class action in court regarding a claim that is subject to a valid and applicable arbitration agreement, a defendant has the ability to request that the court dismiss or stay the litigation in favor of arbitration. If the court grants such a dismissal or stay in favor of arbitration, the class case could, in principle, be refiled as a class arbitration.[382] However, the Study showed that, depending on the market, between 85 to 100 percent of the contracts with arbitration agreements the Bureau reviewed expressly precluded an arbitration proceeding on a class basis. The Study did not identify any contracts with arbitration agreements that explicitly permitted class arbitration. The combined effect of these provisions is to enable companies that adopt arbitration agreements effectively to bar *all* class proceedings, whether in litigation or arbitration, to which the agreement applies.

As set out above in Part II.C, the public filings of some companies confirm that the effect—indeed, often the purpose—of such provisions is to allow companies to shield themselves from class liability.[383] Some have stated, both to the Bureau and in public statements (such as those made by small entity representatives in the SBREFA Panel hearing on arbitration), that companies adopt arbitration agreements for the purpose of blocking private class action filings. Some trade association stakeholders have further argued that the class action waiver is integral to offering individual arbitration: They see little point in permitting individuals to bring arbitrations if other similarly situated consumers will simply join a class action in any case.

The Study showed that defendants are not reluctant to invoke arbitration agreements to block putative class actions and were successful in many cases. The Study recorded nearly 100 Federal and State class action filings that were dismissed or stayed because companies invoked arbitration agreements by filing a motion to compel arbitration and citing an arbitration agreement in support.[384] The Study further indicates that companies were at least 10 times more likely to move to stay or dismiss a case filed as a class action on the basis of an arbitration agreement than non-class cases.[385] In other words, companies used arbitration agreements far more frequently to block class actions than to move individual court cases to arbitration. The Bureau preliminarily finds that the above data combined indicate that the primary reason many companies include arbitration agreements in their contracts is to discourage the filing of class actions and block those that are filed. While companies might perceive other benefits of maintaining arbitration agreements for individual disputes, for many, those benefits seem ancillary to their ability to limit class actions.

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[379] As is discussed below in the Section 1022(b)(2) Analysis, the Study uses "behavioral relief" to refer to class settlements which contained a commitment by a defendant to alter its behavior prospectively, for example by promising to change business practices in the future or implementing new compliance programs. The Bureau did not include a defendant's agreement to just comply with the law, without more, as behavioral relief (Study, *supra* note 2, appendix S at 135).

[380] Study, *supra* note 2, section 6 at 37.

[381] Stakeholders similarly assert that class actions are ineffective because the fact most are resolved on an individual basis indicates that they were unlikely to result in class certification. The Bureau is not aware of evidence to support this assertion. Cases settle on an individual basis for a variety of reasons and, as noted, whether and why they are resolved does not alter the value of aggregate relief awarded in cases that settle on a classwide basis.

[382] In class arbitration, a class representative brings an arbitration on behalf of many individual, similarly-situated plaintiffs. The Study identified only two class arbitrations filed before the AAA from 2010 to 2012. Study, *supra* note 2, section 5 at 86.

[383] *See supra* note 90.

[384] Section 6 of the Study identified two sources of data on motions to compel arbitration. First, the Study identified 562 Federal and State putative class action filings in six products markets from 2010 to 2012, and in 94 of these cases, defendants filed motions to compel arbitration; 46 of these motions were granted, and the rest were denied or still pending at the time the Study was published. *See* Study, *supra* note 2, section 6 at 58. Further, the Study identified at least 50 more putative class cases pertaining to consumer financial products or services (including more than the initial six markets studied) that were dismissed pursuant to a motion to compel arbitration that cited the *Concepcion* case. *Id.*, section 6 at 58–59.

[385] *Id.*, section 6 at 57–58.

The analysis of cases in the Study further supports the Bureau's preliminary finding that arbitration agreements are frequently used to prevent class actions from proceeding. While the Study reports that motions to compel arbitration were filed in only 16.7 percent of class actions filed from 2010 to 2012, the Bureau was unable to determine in what percentage of class action cases analyzed defendants had arbitration agreements and were in a position to invoke an arbitration agreement.[386] However, in a sample of class action cases against credit card companies known to have arbitration agreements, motions to compel arbitration were filed 65 percent of the time and, when filed, they were successful 61.5 percent of the time.[387]

The Bureau further preliminarily finds that when courts grant a motion to dismiss class claims based on arbitration agreements, the large number of consumers who would have constituted the putative class are unlikely to pursue the claims on an individual basis and are even less likely to pursue them in class arbitration. For instance, for the 46 class cases identified in the Study in which a motion to compel arbitration was granted, there was only an indication of 12 subsequent arbitration filings in the court dockets or the AAA Case Data, only two of which the Study determined were filed as putative class arbitrations.[388] More broadly, the overall volume of AAA consumer-filed claims—just over 400 individual cases per year—suggests that individual arbitration is not the destination for any significant number of putative class members. The case study of opt-outs from settlements in the Preliminary Results of the Study further demonstrates this.[389] It reviewed Federal and State class action settlements that involved 13 million class members eligible for $350 million in relief from defendants that used arbitration agreements in their consumer contracts, all naming the AAA as the arbitration administrator.

In these settlements, 3,605 of the 13 million class members chose to opt out of receiving cash relief.[390] Nevertheless, just three out of these 3,605 individuals appear to have taken the opportunity to file arbitrations before the AAA against the same settling defendants.[391] Although the case study is just one example, the Bureau has little reason to believe consumers in similar cases would refile in arbitration.

In addition to blocking class actions that are actually filed, the Bureau preliminarily finds that arbitration agreements inhibit a number of putative class action claims from being filed at all for several reasons. Plaintiffs and their attorneys may choose not to file such claims because arbitration agreements substantially lower the possibility of classwide relief. Given that and the fact that attorneys incur costs in preparing and litigating a case (and consumers rarely pay these costs up front in a class action) attorneys may decline to take such cases at all if they calculate that they will incur costs with little chance of recouping them. Not surprisingly, when a consumer or a lawyer considers whether to file a class action, the existence of an arbitration agreement that, if invoked, would effectively eliminate the possibility for a successful class claim likely discourages many of these suits from being filed at all. While it is difficult to measure the full scope of claims that are never filed because of arbitration agreements, stakeholders that surveyed attorneys found that they frequently turn away cases—both individual and class—when arbitration agreements were present.[392] In some markets, consumers could not file class action cases after market participants included arbitration agreements in their consumer contracts.[393]

Public Enforcement Is Not a Sufficient Means To Enforce Consumer Protection Laws and Consumer Finance Contracts

The Bureau preliminarily concludes, based upon the results of the Study and its own experience and expertise, that public enforcement is not itself a sufficient means to enforce consumer protection laws and consumer finance contracts.

Most consumer protection statutes provide explicitly for private as well as public enforcement mechanisms. For some laws, only public enforcement is available because lawmakers sometimes decide that certain factors favor allowing only government enforcement. For other laws, lawmakers decide there should be both types of enforcement—public and private. On several occasions, Congress expressly recognized the role class actions can have in effectuating Federal consumer financial protection statutes. As described in Part II, for instance, Congress amended TILA in 1974 to limit damages in class cases to the lesser of $100,000 or 1 percent of the creditor's net worth. In reports and floor debates concerning the 1974 TILA amendments, the Senate reasoned that the damages cap it imposed would balance the objectives of providing adequate deterrence while appropriately limiting awards (because it viewed potential TILA class damages as too high).[394] Two years later, when the 1976 TILA amendments increased the cap to the lesser of $500,000 or 1 percent of the creditor's net worth, the primary basis for the increase was the need to adequately deter large creditors.[395]

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[386] *Id.*, section 6 at 56.

[387] *Id.*, section 6 at 61.

[388] *See id.*, section 6 at 57–58.

[389] *See* Preliminary Results, supra note 2, appendix A at 102–04.

[390] *See id.* at 104.

[391] As the Preliminary Results make clear, *at most* three out of 3,605 individuals filed claims before the AAA against the same defendants. It is not clear from the records provided to the Bureau whether these three consumers pressed the same claims in arbitration that formed the basis of the class settlement. Preliminary Results, *supra* note 2, at 104 n.225.

[392] In response to the Bureau's Request for Information in connection with the Study, one consumer group commenter submitted a 2012 survey conducted of 350 consumer attorneys. *See* Nat'l Ass'n of Consumer Advocates, *Consumer Attorneys Report: Arbitration clauses are everywhere, consequently causing consumer claims to disappear*, at 5 (2012), *available at http://www.consumeradvocates.org/sites/default/files/NACA2012BMASurveyFinalRedacted.pdf* (hereinafter NACA Survey). Over 80 percent of those attorneys reported turning down at least one case they believed to be meritorious because the presence of an arbitration agreement would make filing the case futile and of those, the median number of cases each attorney turned away was t=10. *Id.* at 5. The NACA survey indicates that consumer attorneys believe that the presence of arbitration agreements often inhibit them from filing complaints, including class actions, on behalf of consumers. The Bureau notes that this survey has methodological limits. The survey does not purport to indicate the total number of cases turned away in aggregate. And the survey does not examine whether a case that was turned down by a single attorney was subsequently filed by another attorney.

[393] *See, e.g., Ross* v. *American Express Co.*, 35 F.Supp.3d 407, 433 (S.D.N.Y. 2014) (reviewing standing of credit card holders claiming injury from inclusion of pre-dispute arbitration agreements and noting that "loss of the services of class action lawyers to monitor and challenge Issuing Bank behavior and the loss of the opportunity to go to court" were a prospective injury for standing purposes).

[394] *Class Actions Under the Truth in Lending Act*, 83 Yale L.J. 1410, 1429 (1974) ("Two major concerns were expressed by the Senate in its report and floor debates on this amendment. First, the Senate took note of the trend away from class actions after [*Ratner* v. *Chemical Bank New York Trust Co.*, 329 F. Supp. 270 (S.D.N.Y. 1971)] and the need for potential class action liability to encourage voluntary creditor compliance. The Senate considered individual actions an insufficient deterrent to large creditors, and so imposed a $100,000 or one percent of net worth ceiling to provide sufficient deterrence without financially destroying the creditor.").

[395] S. Rept. 94–590, Consumer Leasing Act of 1976, at 8 ("The recommended $500,000 limit,

The market for consumer finance products and services is vast, encompassing trillions of dollars of assets and revenue and tens if not hundreds of thousands of companies. As discussed further in the Section 1022(b)(2) Analysis, this proposal alone would cover about 50,000 firms. And this proposal would leave unaffected the single largest consumer financial market—the mortgage market—because Congress expressly prohibited most arbitration agreements in that market in the Dodd-Frank Act.[396]

In contrast, the resources of public enforcement agencies are limited. For example, the Bureau enforces over 20 separate Federal consumer financial protection laws with respect to every depository institution with assets of more than $10 billion and all non-depository institutions. Yet the Bureau has about 1,500 employees, only some of whom work in its Division of Supervision, Enforcement, and Fair Lending, which supervises for compliance and enforces violations of these laws.[397] Furthermore, the Bureau is the only federal agency exclusively focused on enforcing these laws. Other financial regulators, including Federal prudential regulators and State agencies, have authority to supervise and enforce other laws with respect to the entities within their jurisdictions, but they face resource constraints as well. Further, those other regulators often have many different mandates, only part of which is consumer protection. By authorizing private enforcement of the consumer financial statutes, Congress and the states have allowed for more comprehensive enforcement of these statutory schemes.

The Study showed private class actions complement public enforcement rather than duplicate it. In 88 percent of the public enforcement actions the Bureau identified, the Bureau did not find an overlapping private class action.[398] Similarly, in 68 percent of the private class actions the Bureau identified, the Bureau did not find an overlapping public enforcement action. Moreover, in a sample of class action settlements of less than $10 million, there was no overlapping public enforcement action 82 percent of the time.[399] Even where there was overlap, private class actions tended to precede public enforcement actions, roughly two-thirds of the time.

Finally, the Bureau notes that as a general matter public authorities cannot enforce private contracts or violations of the common law affecting consumers. For those types of claims, private class actions are not just complementary but often the only likely means by which consumers can enforce their rights.

C. The Bureau Preliminarily Finds That the Class Proposal Is in the Public Interest and for the Protection of Consumers

The prior section articulated the Bureau's preliminary findings that individual dispute resolution mechanisms are an insufficient means of enforcing consumer financial laws and contracts; public enforcement cannot be relied upon to fully and effectively enforce all of these laws and private contracts; and class actions, when not blocked by arbitration agreements, provide a valuable complement to public enforcement and a means of providing substantial relief to consumers. In light of the Study, the Bureau's experience and expertise, and the Bureau's analysis and findings as discussed above, the Bureau preliminarily finds that precluding providers from blocking consumer class actions through the use of arbitration agreements would better enable consumers to enforce their rights under Federal and State consumer protection laws and the common law and obtain redress when their rights are violated. Allowing consumers to seek relief in class actions, in turn, would strengthen the incentives for companies to avoid potentially illegal activities and reduce the likelihood that consumers would be subject to such practices in the first instance. The Bureau preliminarily finds that both of these outcomes resulting from allowing consumers to seek class action relief would be in the public interest and for the protection of consumers.

The analysis below discusses the bases for these findings in the reverse order, beginning with a discussion of the protection of consumers and then addressing the public interest. As discussed further below, the Bureau recognizes that creating these incentives and causing companies to choose between increased risk mitigation and enhanced exposure to liability would impose certain burdens on providers. These burdens would be chiefly in the form of increased compliance costs to prevent violations of consumer financial laws enforceable by class actions, including the costs of forgoing potentially profitable (but also potentially illegal) business practices that may increase class action exposure, and in the increased costs to litigate class actions themselves, including, in some cases, providing relief to a class. The Bureau also recognizes that providers may pass through some of those costs to consumers, thereby increasing prices. Those impacts are delineated and, where possible, quantified in the Bureau's Section 1022(b)(2) Analysis below and, with regard in particular to burdens on small financial services providers, discussed further below in the Section-by-Section Analysis to proposed § 1040.4(a) and in the initial Regulatory Flexibility Analysis (IRFA).

After reviewing the considerations that would support a potential finding that the class proposal would be for the protection of consumers and in the public interest, this section considers, under the legal standard established by section 1028, costs to providers as well as other potentially countervailing considerations, such as the potential impacts on innovation in the market for consumer financial products and services. In light of all these considerations, the Bureau preliminarily finds that that standard is satisfied.

The Bureau seeks comments on its preliminary finding set forth below—that the class proposal would be in the public interest and for the protection of consumers.

Enhancing Compliance With the Law and Improving Consumer Remuneration and Company Accountability Is for the Protection of Consumers

Under the status quo, arbitration agreements obstruct effective enforcement of the law through class proceedings. This harms consumers in two ways: It makes consumers *both* more likely to be subject to potentially illegal conduct because of underinvestment in compliance activities and deliberate risk-taking by companies *and* makes consumers less likely to be able to obtain meaningful relief when violations do occur. The Bureau preliminarily finds that the class proposal, by changing the status quo, creating incentives for greater compliance, and restoring an important means of relief and accountability, would be for the protection of consumers.

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coupled with the 1 percent formula, provides, we believe, a workable structure for private enforcement. Small businesses are protected by the 1 percent measure, while a potential half million dollar recovery ought to act as a significant deterrent to even the largest creditor."); *see also* H. Rep. 95–1315, Electronic Fund Transfer Act (1978) at 15.

[396] Dodd-Frank section 1414.

[397] Bureau of Consumer Fin. Prot., *Semi-Annual Report of the CFPB*, at 131 (2015), *available at http://files.consumerfinance.gov/f/201511_cfpb_semi-annual-report-fall-2015.pdf* (noting that CFPB had 1,529 staff as of September 30, 2015).

[398] Study, *supra* note 2, section 9 at 4.

[399] *Id.*

To the extent that laws cannot be effectively enforced, the Bureau believes that companies may be more likely to take legal risks, *i.e.*, to engage in potentially unlawful business practices, because they know that any potential costs from exposure to putative class action filings have been reduced if not effectively eliminated. Due to this reduction in legal exposure (and thus a reduction in risk), companies have less of an incentive to invest in compliance management in general, such as by investing in employee training with respect to compliance matters or by carefully monitoring changes in the law and making appropriate changes in their conduct.

As discussed in the Section 1022(b)(2) Analysis, economic theory supports the Bureau's belief that the availability of class actions affects compliance incentives. The standard economic model of deterrence holds that individuals who benefit from engaging in particular actions that violate the law will instead comply with the law when the expected cost from violation, *i.e.*, the expected amount of the cost discounted by the probability of being subject to that cost, exceeds the expected benefit. Consistent with that model, Congress[400] and the courts[401] have long recognized that deterrence is one of the primary objectives of class actions.

The preliminary finding that class action liability deters potentially illegal conduct and encourages investments in compliance is confirmed by the Bureau's own experience and its observations about the behavior of firms and the effects of class actions in markets for consumer financial products and services. The Bureau has analyzed a variety of evidence that, in its view, indicates that companies invest in compliance to avoid activities that could increase their exposure to class actions.

First, the Bureau is aware that companies monitor class litigation relevant to the products and services that they offer so that they can mitigate their liability by changing their conduct before being sued themselves. This effect is evident from the proliferation of public materials—such as compliance bulletins, law firm alerts, and conferences—where legal and compliance experts routinely and systematically advise companies about relevant developments in class action litigation,[402] for instance claims pertaining to EFTA,[403] the Fair and Accurate Credit Transactions Act (FACTA),[404] FCRA,[405] FDCPA,[406] and the TCPA.[407]

Relatedly, where there is class action exposure, companies and their representatives will seek to focus more attention and resources on general proactive compliance monitoring and management. The Bureau has seen evidence of this motivation in various law and compliance firm alerts. For example, one such alert, posted shortly after the Bureau released its SBREFA Outline, noted that the Bureau was considering proposals to prevent arbitration agreements from being used to block class actions. In light of these proposals, the firm recommended several "Steps to Consider Taking Now," including, "Evaluate your consumer compliance management system to identify and fill any gaps in processes and procedures that inure to the detriment of consumers under standards of unfair, deceptive, and abusive acts or practices, and that could result in groups of consumers taking action." [408] Another recent alert relating to electronic payments litigation noted that firms could either improve their compliance efforts or adopt arbitration agreements to limit their class action exposure.[409] Similarly, trade associations routinely update their members about class litigation and encourage them to examine their practices so as to minimize their class action exposure. For example, a 2015 alert from a credit union trade association describes "a new potential wave of overdraft-related suits . . . . target[ing] institutions that base fees on 'available' instead of 'actual' balance" and advises credit unions to take five compliance-related steps to mitigate potential class action liability.[410]

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[400] *See, e.g., supra* note 394; H. Rept. 94–589, Equal Credit Opportunity Act Amendments of 1976, at 14 (Jan. 21, 1976).

[401] *See, e.g., Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 344 (1979) (noting that antitrust class actions "provide a significant supplement to the limited resources available to the Department of Justice for enforcing the antitrust laws and deterring violations"); *Hughes* v. *Kore of Indiana Enter.*, 731 F.3d 672, 677–78 (7th Cir. 2013) (Posner, J.) ("A class action, like litigation in general, has a deterrent as well as a compensatory objective. . . . The compensatory function of the class action has no significance in this case. But if [defendant's] net worth is indeed only $1 million . . . the damages sought by the class, and, probably more important, the attorney's fee that the court will award if the class prevails, will make the suit a wake-up call for [defendant] and so have a deterrent effect on future violations of the Electronic Fund Transfer Act by [the defendant] and others."); *deHaas* v. *Empire Petroleum Co.*, 435 F.2d 1223, 1231 (10th Cir. 1970) ("Since [class action rules] allow many small claims to be litigated in the same action, the overall size of compensatory damages alone may constitute a significant deterrent."); *Globus* v. *Law Research Service, Inc.*, 418 F.2d 1276, 1285 (2d Cir. 1969) ("Compensatory damages, especially when multiplied in a class action, have a potent deterrent effect.").

[402] A brief search by the Bureau has uncovered dozens of alerts advising companies to halt conduct or review practices in light of a class action filed in their industry that may impact their businesses. A selection of these alerts is set forth in the next several footnotes and all are on file with the Bureau. *See, e.g.*, Jones Day, *The Future of Mandatory Consumer Arbitration Clauses* (Nov. 13, 2015) ("Companies that are subject to the CFPB's oversight should take steps now to ensure their compliance with all applicable consumer financial services laws and to prepare for the CFPB's impending rulemaking [on arbitration]. These steps could help to diminish . . . risks that would result from the CFPB's anticipated placement of substantial limitations on the use of arbitration clauses"); Ballard Spahr LLP, *Seventh Circuit Green Lights Data Breach Class Action Against Neiman Marcus* (July 28, 2015) (noting in response to a recent data breach class action that its attorneys "regularly advise financial institutions on compliance with data security and privacy issues"); Bryan Cave LLP, *Plaintiffs Seek Class Status for Alleged Card Processing "Junk Fee" Scheme* (Nov. 5, 2015) ("[P]rocessors and merchant acquirers should revisit their form agreements and billing practices to ensure they are free of provisions that a court might consider against public policy, and that all fees payable by a merchant are clearly identified in the application, the main agreement, or a schedule to the agreement."); Jenner & Block LLP, *Civil Litigation Outlook for 2016* (Feb. 1, 2016) ("Given such developments, 2016 will bring a strong and continued focus on privacy protections and data breach prevention both in the class action context and otherwise."); Bryan E. Hopkins, Legal Risk Management for In-House Counsel & Managers 49–52 (2013) (noting a variety of compliance activities companies should consider in product design in order to mitigate class action exposure).

[403] *See, e.g.*, Bracewell LLP, *Bankers Beware: ATM Fee Class Action Suits on the Rise* (Oct. 5, 2010) (noting dozens of class action cases regarding ATM machines and advising ATM operators "to make sure that their ATMs provide notice to consumers on both the machine and on the screen (with the opportunity for the customer to opt-out before a fee is charged) if a fee will be charged for providing the ATM service.").

[404] *See, e.g.*, Arent Fox LLP, *Unlucky Numbers: Ensuring Compliance with the Fair and Accurate Credit Transactions Act* (Nov. 18, 2011) (explaining allegations in one class action and noting that "ensuring proactive compliance with FACTA is crucial because a large number of non-compliant receipts may be printed before the problem is brought to a company's attention."); Jones Day, *If Your Business Accepts Credit Cards, You Need to Read This* (Sept. 2007) ("If your company has not been sued for a FACTA violation, you still need to act. . . . If any potential violation is noted, correct it immediately. Also, to avoid future unknown liability, monitor the decisions related to FACTA to determine whether there are any changes regarding the statute's interpretation. With that, your company will be able to immediately correct any 'new' violations found to exist under the law. If your company has been sued, act immediately to come into compliance with FACTA.").

[405] *See, e.g.*, K&L Gates LLP, *Beyond Credit Reporting: the Extension of Potential Class Action Liability to Employers under the Fair Credit Reporting Act* (Apr. 7, 2014) ("In light of FCRA's damages provisions and the recent initiation of putative class actions against large national companies, business entities which collect background information for prospective or current employees should stay abreast of the requirements of FCRA and related state law, and should be proactive in developing sound and logical practices to comply with FCRA's provisions.").

[406] *See, e.g.*, K&L Gates LLP, *You Had Me at "Hello" Letter: Second Circuit Concludes That a RESPA Transfer-of-Servicing Letter Can Be a Communication in Connection with Collection of a Debt* (Sept. 22, 2015) ("[M]ortgage servicers would do well to ensure they are paying close attention when reviewing such letters for FDCPA compliance" in order to avoid class action liability).

[407] *See, e.g.*, DLA Piper, *Ninth Circuit Approves Provisional Class Action Certification in TCPA Class Action, Defines "Prior Express Consent"* (Nov. 19, 2012) ("*Meyer* [a class action] seems to make clear that creditors and debt collectors must verify that debtors provided their cell phone numbers and that the numbers were provided *at the time of the transactions related to the debts* before contact is made using an automated or predictive dialer. For cell phone numbers provided *later* by debtors, it is imperative that creditors and debt collectors make clear to the owners of those numbers that they may be contacted at these numbers for purposes of debt collection."); Mayer Brown LLP, *Seventh Circuit Holds That Companies Are Liable Under Telephone Consumer Protection Act for Placing Automated Calls to Reassigned Numbers* (May 16, 2012) ("[C]ompanies must ensure that the actual recipients of automated calls have consented to receiving them, and take steps to update their records when telephone numbers have been reassigned to new subscribers. For example, the Seventh Circuit [in a class action] noted that callers could avoid liability by doing a 'reverse lookup to identify the current subscriber' or by 'hav[ing] a person make the first call' to verify that the number is 'still assigned' to the customer.").

While the Bureau believes that such monitoring and attempts to anticipate litigation affect the practices of companies that are exposed to class action liability, the impacts can be hard to document and quantify because companies rarely publicize changes in their behavior, let alone publicly attribute those changes to risk-mitigation decisions. The Bureau has, however, identified instances where it believes that class actions filed against one or more firms in an industry led to others changing their practices, presumably in an effort to avoid being sued themselves. For example, between 2003 and 2006, 11 auto lenders settled class action lawsuits alleging that the lenders' credit pricing policies had a disparate impact on minority borrowers under ECOA. In the settlements, the lenders agreed to restrict interest rate markups to no more than 2.5 percentage points. Following these settlements, a markup cap of 2.5 percent became standard across the industry even with respect to companies outside the direct scope of the settlements.[411] Use of caps has continued even after the consent decrees that triggered them have expired.[412]

As another example, since 2012, 18 banks have entered into class action settlements as part of the Overdraft MDL,[413] in which plaintiffs challenged the adoption of a particular method of ordering the processing of payment transactions that increases substantially the number of overdraft fees incurred by consumers compared with alternative methods. Specifically, the litigation challenged banks that commingled debit card transactions with checks and automated clearinghouse transactions that come in over the course of a day and reordered the transactions to process them in descending order based on amount. Relative to chronological or a lowest-to-highest ordering, this practice typically produces more overdraft fees by exhausting funds in the account before the last several small debits can be processed. In the years since the litigation, the industry has largely abandoned this practice. According to a 2015 study, from 2013 to 2015, the percentage of large banks that used commingled high-to-low-reordering decreased from 37 percent to 9 percent.[414]

A third example of companies responding to class actions by changing their practices to improve their compliance with the law relates to foreign transaction fees and debit cards. *In re Currency Conversion Fee Antitrust Litigation* (MDL 1409) is a class action proceeding in which plaintiffs alleged, in part, that banks that issued credit cards and debit cards violated the law by not adequately disclosing foreign transaction fees to consumers when they opened accounts.[415] In the settlement, two large banks agreed to list the rate applicable to foreign transaction fees in their initial disclosures for personal checking accounts with debit cards.[416] A review of the market subsequent to the 2006 settlement indicates that this type of disclosure is now standard practice for debit card issuers across the market, not merely by the two large banks bound by the settlement.[417]

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[408] *See, e.g.*, Jones Day, *The Future of Mandatory Consumer Arbitration Clauses*, JonesDay.com (Nov. 2015), *available at http://www.jonesday.com/the-future-of-mandatory-consumer-arbitration-clauses-11-13-2015/*.

[409] Ballard Spahr LLP, *The Next EFTA Class Action Wave Has Started* (Sept. 1, 2015), *http://www.ballardspahr.com/alertspublications/legalalerts/2015-09-01-the-next-efta-class-action-wave-has-started.aspx* ("We have counseled financial institutions and consumer businesses . . . on taking steps to mitigate the risk of claims by consumers (such as by adding an enforceable arbitration provision to the relevant agreement)."); *see also* Wiley Rein LLP, *E-Commerce—The Next Target of 'Big Data' Class Actions?* (Jan. 5, 2016), *http://www.wileyrein.com/newsroom-articles-E-Commerce-The-Next-Target-of-Big-Data-Class-Actions.html* (noting that arbitration agreements can help to avoid class litigation and advising that "it would also be advisable for e-commerce vendors to include in their privacy policy an arbitration clause establishing that any dispute would be adjudicated in individual arbitration (as opposed to class litigation or arbitration).").

[410] Credit Union Magazine, *Minimize the Risk of Overdraft Fee Lawsuits*, Credit Union Nat'l Ass'n (June 26, 2015), *available at http://news.cuna.org/articles/106373-minimize-the-risk-of-overdraft-fee-lawsuits*.

[411] *See* F&I and Showroom, *2.5 Percent Markups Becoming the Trend* (Aug. 9, 2005), *http://www.fi-magazine.com/news/story/2005/08/2-5-markups-becoming-the-trend.aspx*; Chicago Automobile Trade Ass'n, *Automotive News: 2.5 Percent Becoming Standard Dealer Finance Markup* (Nov. 22, 2010), *http://www.cata.info/automotive_news_25_becoming_standard_dealer_finance_markup/*. The Bureau notes that California's adoption in 2006 of the Car Buyer's Bill of Rights, which mandated a maximum 2.5 percent markup for loan terms of 60 months or less, may also have influenced the adoption of this markup limit. Cal. Dep't of Motor Vehicles, *Car Buyer's Bill of Rights, available at https://www.dmv.ca.gov/portal/dmv/?1dmy&urile=wcm:path:/dmv_content_en/dmv/pubs/brochures/fast_facts/ffvr35*.

[412] *See e.g.*, Automotive News, *Feds Eye Finance Reserve* (Feb. 25, 2013), *available at http://www.autonews.com/article/20130225/RETAIL07/302259964/feds-eye-finance-reserve* ("Most were settled by 2003, with the lenders agreeing to cap the finance reserve at two or three percentage points. That cap became the industry standard.").

[413] *See supra* notes 311–313 & 371–372 and accompanying text.

[414] *See* Pew Charitable Trusts, *Checks and Balances: 2015 Update*, at 12, Figure 11 (May 2015), *available at http://www.pewtrusts.org/~/media/assets/2015/05/checks_and_balances_report_final.pdf*. According to a different 2012 study, community banks predominantly posted items in an order intended to minimize overdrafts, such as low-to-high or check or transaction order. The Independent Community Banks of America (ICBA) Overdraft Payment Services Study at 40 (June 2012), *available at https://www.icba.org/files/ICBASites/PDFs/2012OverdraftStudyFinalReport.pdf*. Only 8.8 percent of community banks reordered transactions from high to low dollar amount. *Id.* at 42 & fig. 57. Most of the community banks studied did not change their posting order in the two year period their overdraft practices were reviewed. *See id.* at 42 (noting that 82 percent of community banks had not changed the order in which they posted transactions during the two years before the ICBA's study). To the extent that community banks changed their practices, in the two years preceding the 2012 study, 70.7 percent of those that changed their practices stopped high-to-low reordering. *Id.*

[415] Third Consol. Am. Class Action Compl., *In Re Currency Conversion Fee Antitrust Litig.*, MDL Docket No. 1409 (S.D.N.Y., July 18, 2006) (alleging that general purpose and debit cardholders were "charged hidden and embedded collusively set prices, including a hidden, embedded and collusively set base currency conversion fee equal to 1% of the amount of the foreign currency transaction," that "most member banks tack[ed] on a currency conversion fee of their own," and that all of this was done in violation of "TILA, EFTA and the state consumer protection laws require[ing] disclosure of such fees in, inter alia, cardholder solicitations and account statements").

[416] Stip. & Agmt of Settlement, *In re Currency Conversion Fee Antitrust Litig.*, MDL 1409, 27–30 (S.D.N.Y. July 20, 2006).

[417] In some instances, the dynamics of deterrence may be different. In another example from the *In re Currency Conversion Fee* class action litigation, the defendants voluntarily halted the conduct at issue upon being sued. Karen Bruno, *Foreign transaction fees: Hidden credit card 'currency conversion fees' may be returned—if you file soon*, CreditCards.com (May 23, 2007), *http://www.creditcards.com/credit-card-news/foreign-transaction-fee-1282.php* ("[I]n most cases the

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These are a few examples of industry-wide change in response to class actions that the Bureau believes support its preliminary finding that exposure to consumer financial class actions creates incentives that encourage companies to change potentially illegal practices and to invest more resources in compliance in order to avoid being sued.[418] The cases help to illustrate the mechanisms, among others, by which the proposed class rule would deter potentially illegal practices by many companies. The Bureau believes that the result would be more legally compliant consumer financial products and services that would advance the protection of consumers.

As discussed in more detail in the Section 1022(b)(2) Analysis, the Bureau does not believe it is possible to quantify the benefits to consumers from the increased compliance incentives attributable to the class proposal due in part to obstacles to measuring the value of deterrence directly in a systematic way. Nonetheless, the Bureau preliminarily finds that increasing compliance incentives would be for the protection of consumers.

The Bureau recognizes that some companies may decide to assume the resulting increased legal risk rather than investing more in ensuring compliance with the law and foregoing practices that are potentially illegal or even blatantly unlawful. Other companies may seek to mitigate their risk but miscalibrate and underinvest or under comply. To the extent that this happens, the Bureau preliminarily finds that the class proposal would enable many more consumers to obtain redress for violations than do so today, when companies can use arbitration agreements to block class actions. As set out in the Bureau's Section 1022(b)(2) Analysis, the amount of additional compensation consumers would be expected to receive from class action settlements in the Federal courts varies by product and service—specifically, by the prevalence of arbitration agreements in those individual markets—but is substantial nonetheless and in most markets represents a considerable increase.[419]

Furthermore, the Bureau preliminarily finds that through such litigation consumers would be better able to cause providers to cease engaging in unlawful or questionable conduct prospectively than under a system in which companies can use arbitration agreements to block class actions. Class actions brought against particular providers can, by providing behavioral relief into the future to consumers, force more compliance where the general increase in incentives due to litigation risk are insufficient to achieve that outcome.

The Overdraft MDL also helps illustrate the potential ongoing value of such prospective relief. A recent study by an academic researcher based on the Overdraft MDL settlements offered rare data on the relationship between the settlement relief offered to class members compared to the sum total of injury suffered by class members that has important implications for the value of prospective relief. The analysis calculated that in the various settlements, the value of cash settlement relief offered to the class constituted between 7 and 70 percent (or an average of 38 percent and a median of 40 percent) of the total value of harm suffered by class members from overdraft reordering during the class period.[420] The total value of injuries suffered by class members can be estimated using these settlement relief-to-total consumer harm ratios and the sum of cash settlement relief. Using the average settlement-to-harm rate of 38 percent, and the total cash relief figure of about $1 billion in the Overdraft MDL settlements, an estimate of the total value of harm suffered by consumers in the settlements identified by the Bureau would be approximately $2.6 billion.[421] More concretely, this figure estimates the total amount of additional or excess overdraft fees class members paid to the settling banks during the class periods because of the banks' use of the high-to-low reordering method to calculate overdraft fees.

This sum—$2.6 billion—can also be used as a basis for determining the potential *future* value of the cessation of the high-to-low reordering practice. If $2.6 billion is the total amount of excess overdraft fees class members paid during their respective class periods because of the high-to-low reordering practice, the same figure (converted to an annualized figure using the class period)[422] may be used to estimate how much the same class members save *every year* in the future by no longer being subject to high-to-low reordering practice for purposes of calculating overdraft fees. The prospective benefits to consumers as a whole are often even larger because companies frequently change their practices not just with regard to class members, but to their customer base as a whole, and other companies that were not sued may also preemptively change their practices. As

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companies voluntarily began disclosing fees once the suit was filed.").

[418] Some stakeholders have suggested that even absent class action exposure there already are sufficient incentives for compliance and that class actions are too unpredictable to increase compliance incentives. The Bureau is not, at this point, persuaded by these arguments. The Bureau recognizes, of course, as discussed further in the Section 1022(b)(2) Analysis, that exposure to private liability is not the only incentive that companies have to comply with the law. However, based on its experience and expertise and for the reasons discussed herein, the Bureau believes that companies can (and in many cases should) do more to ensure that their conduct is compliant and that the presence of class action exposure will affect companies' incentives to comply.

[419] As is explained in the Section 1022(b)(2) Analysis below, the Bureau calculates the future number of class actions by estimating that, in any given market, the providers that currently use arbitration agreements would face class litigation at the same rate and same magnitude as the providers that currently do not use arbitration agreements faced during the five-year period covered by the Study. For all but one of the markets for which the Bureau makes an estimate, only one market—pawn shops –was there no Federal class settlement in the period studied, and the Bureau projects that consumers in these markets would receive no additional compensation from Federal class settlements if the class proposal were adopted. Because it did not have the relevant data, the Bureau did not separate State class settlements by markets or project additional compensation attributable to future State class settlements. Where litigation actually occurs, there would also be increased costs to providers in the form of attorney's fees and related expenses. The Bureau addresses these costs below.

[420] Brian T. Fitzpatrick & Robert C. Gilbert, *An Empirical Look at Compensation in Consumer Class Actions,* 11 N.Y.U. J. L. & Bus. 767, 785 (2015) ("[N]ot only can we report the average payout for class members who participated in the settlements, but also what the plaintiffs thought these payouts recovered relative to the damage done to class members."). Fitzpatrick worked with Gilbert, an attorney involved in the Overdraft MDL settlements, to identify the total quantum of overdraft fees attributable to the practice of reordering in settlements identified by the Study. *Id.*

[421] *See id.* at 786 & tbl. 3. The calculation is the total amount of relief the Study identified with the Overdraft MDL settlements ($1 billion), divided by .38 (the average "recovery rate" of the 15 Overdraft settlements identified by Fitzpatrick and Gilbert, which ranged from approximately 14 percent to 69 percent). While Fitzpatrick and Gilbert's analysis separately identified the settlement to harm ratio for each individual bank, the banks were anonymized for purposes of their analysis and, therefore, cannot be matched to the specific class settlements set out in the Study.

[422] Assuming the average class period was the 10-year class period of the largest settlement, the 18 Overdraft MDL settlements collectively provide $260 million in prospective relief per year to those class members identified in our case studies. This estimate assumes that future overdraft fees generated from the high-to-low practice would have been comparable to the fees generated in the past. This estimate does not take into account the ongoing benefit to other consumers who were not class members (those who, for instance, were not in the jurisdiction covered by the settlement, or those who acquired accounts after the settlement), nor is the benefit to those consumers who bank with institutions that were not sued but voluntarily stopped the overdraft reordering practice. Nor does this figure include any of the other settlements identified by the Bureau in Section 8 of the Study, which did not contain the kind of information on the proportion of calculable harm to settlement relief.

this one example shows, prospective relief—because it can continue in perpetuity—can have wide-ranging benefits for consumers over and above the value of retrospective relief, and can, through changing the behavior of providers subject to a suit, benefit other customers of these providers who are not class members.

For all of these reasons, the Bureau believes that the class proposal would increase compliance and increase redress for non-compliant behavior and thus would be for the protection of consumers. To the extent that the class proposal would affect incentives (or lead to more prospective relief) and enhance compliance, consumers seeking to use particular consumer financial products or services would more frequently receive the benefits of the statutory and common law regimes that legislatures and courts have implemented and developed to protect them. Consumers would, for example, be more likely to receive the disclosures required by and compliant with TILA, to benefit from the error-resolution procedures required by TILA and EFTA, and to avoid the unfair and abusive debt collection practices proscribed by the FDCPA and the discriminatory practices proscribed by ECOA.[423] In those States that provide for private enforcement of their fair competition law, consumers similarly would be less likely to be exposed to unfair or deceptive acts or practices. Consumers also would be more likely to receive the benefits of their contract terms and less likely to be exposed to tortious conduct.

Enhancing Compliance With the Law and Improving Consumer Remuneration and Company Accountability Is in the Public Interest

The Bureau also preliminarily finds that the class proposal would be in the public interest. This preliminary finding is based upon several considerations, which are discussed below and include the beneficial aspects for consumers (who, as previously discussed, are part of the public whose interests are to be furthered), leveling the playing field for providers, and enhancing the rule of law. Consistent with the legal standard, the Bureau also considers concerns, which have been raised by stakeholders as well, including the class proposal's impacts on costs and financial access, innovation, the potential of class actions to provide windfalls to plaintiffs, and the availability of individual dispute resolution, and preliminarily finds that the class proposal would be for the protection of consumers and in the public interest in light of full consideration of these and other relevant factors.

First, as discussed extensively above, the Bureau believes that its preliminary finding that the class proposal would protect consumers also contributes to a finding that the class proposal would be in the public interest.

Second, the Bureau considers the impact the class proposal would have on leveling the playing field in markets for consumer financial products and services in its public interest analysis. The Bureau preliminarily finds that the class proposal would create a more level playing field between providers that concentrate on compliance and providers that choose to adopt arbitration agreements to insulate themselves from being held to account by the vast majority of their customers and, as the Study showed, from virtually any private liability. The Bureau believes this also supports a determination that the class proposal would be in the public interest.

Specifically, the Bureau believes that companies that adopt arbitration agreements to manage their liability may possess certain advantages over companies that instead make greater investments in compliance to manage their liability, both in their ability to minimize costs and to profit from the provision of potentially illegal consumer financial products and services. The Bureau does not expect that eliminating the advantages enjoyed by companies with arbitration agreements would necessarily shift market share to companies that eschew arbitration agreements and instead focus on up front compliance because the future competitive balance between companies would also depend on many additional factors. It has thus not counted the effects of this factor as a major element of the Section 1022(b)(2) Analysis. However, the Bureau believes that eliminating this type of arbitrage as a potential source of competition would be in the public interest.[424]

Finally, the Bureau believes that its preliminary finding that the class proposal would have the effect of achieving greater compliance with the law implicates additional benefits beyond those noted above with respect to the protection of individual consumers and impacts on responsible providers. Federal and State laws that protect consumers were developed and adopted because many companies, unrestrained by a need to comply with such laws, would engage in conduct that is profit-maximizing but that lawmakers have determined disserves the public good by distorting the efficient functioning of these markets. These Federal and State laws, among other things, allow consumer financial markets to operate more transparently and to operate with less invidious discrimination, and for consumers to make more informed choices in their selection of financial products and services.

Thus, the Bureau believes that by creating enhanced incentives and remedial mechanisms to enforce compliance, the class proposal could improve the functioning of consumer financial markets as a whole. First, enhanced compliance would, over the long term, create a more predictable, efficient, and robust regime. Second, the Bureau also believes enhanced compliance and more effective remedies could also reduce the risk that consumer confidence in these markets would erode over time as individuals, faced with the non-uniform application of the law and left without effective remedies for unlawful conduct, may be less willing to participate in certain sections of the consumer financial markets. For all of these reasons, the Bureau believes that promoting the rule of law—in the form of accountability under and transparent application of the law to providers of consumer financial products or services—would be in the public interest as well as for the protection of consumers.

During both the SBREFA process and ongoing outreach with various stakeholders, some participants have suggested that the class proposal would not be in the public interest because it would: (1) Impose costs on providers that would be passed through to consumers; (2) reduce incentives for innovation in markets for consumer financial products and services; (3) deliver windfalls to named plaintiffs and class members; or (4) negatively affect the means available to consumers to resolve individual disputes formally and informally. Participants in the SBREFA process also asserted that the class proposal would have disproportionate impacts on small entities. After carefully considering these points and factoring them into its analysis as discussed further below and in the discussion of small business impact in the Section-by-Section Analysis to proposed § 1040.4(a), the Bureau preliminarily finds that the class proposal would on balance be in the public interest.[425]

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[423] *See generally* Study, *supra* note 2, section 8 at 13 & fig. 1 (noting the number of class settlements by frequency of claim type).

[424] The Bureau recognizes, of course, that under the current system companies without arbitration agreements can level the playing field by adopting such agreements. But the Bureau believes that the public interest would be served by a system in which a level playing field is achieved by bringing all companies' compliance incentives up to the level of those that face class action liability for non-compliance. The public interest would not be served by a system in which the level playing field is achieved by bringing compliance incentives down to the level of those companies that are effectively immune from such liability. Indeed, "races to the bottom" within the consumer financial services markets were a significant concern prompting Congress to enact the Dodd-Frank Act because of their potential impacts on consumers, responsible providers, and broader systemic stability. S. Rept. 111–176, The Restoring American Financial Stability Act of 2010, at 10 (Apr. 30, 2010) ("This fragmentation led to regulatory arbitrage between federal regulators and the states, while the lack of any effective supervision on nondepositories led to a 'race to the bottom' in which the institutions with the least effective consumer regulation and enforcement attracted more business, putting pressure on regulated institutions to lower standards to compete effectively, 'and on their regulators to let them.").

Costs to Providers and Pass-Through to Consumers. As discussed in the Section 1022(b)(2) Analysis, the Bureau recognizes that the class proposal would impose three types of costs on providers: (1) Costs associated with increased compliance, including compliance management costs and costs of eschewing potentially illegal but profitable practices; (2) costs for legal defense and retrospective and prospective remediation; and (3) costs associated with changing contracts. As further discussed in that section, the Bureau also recognizes that some portion of those costs could be passed through to consumers. The Bureau believes, however, that the fact that these costs would, at least in the first instance, be incurred by providers or that some of the costs could be passed through to consumers does not alter its finding that the class proposal would be in the public interest.

The Bureau believes that compliance, litigation, and remediation costs generally are a necessary component of the broader private enforcement scheme, and that certain costs are vital to uphold a system that vindicates actions brought through the class mechanism. The specific marginal costs that would be attributable to the class proposal are similarly justified. These costs are justified to protect consumers and produce the benefits discussed above. The fact that some of these costs, described below, may be passed through does not alter the Bureau's belief that it would be in the public interest (and for the protection of consumers) for the class proposal to cause providers to incur these costs.[426]

Further, as noted in the Section 1022(b)(2) Analysis below, the Bureau believes that it is important given the size of the markets at issue to evaluate cost predictions relative to the number of accounts and consumers so as to properly assess the scale of the predictions. Given hundreds of millions of accounts across affected providers, the hundreds or thousands of competitors in most markets, and the numerical estimates of costs as specified below, the Bureau does not believe that the expenses due to the additional class settlements that would result from this proposed rule would result in a noticeable impact on access to consumer financial products or services.[427] Similarly, the Bureau also believes that the potential cost impacts on small providers, and individual providers more generally, are not as large as some stakeholders have suggested based on the detailed analysis provided below that factors in likelihood of litigation, recovery rates, and other considerations.

Innovation. Some stakeholders have suggested that the proposal would disserve the public interest because it would discourage innovation. According to this argument, providers would refrain from developing or offering products and services that benefit consumers and are lawful—or may withdraw existing, beneficial products from the market—due to concerns that the products may pose legal risk, for instance because they are novel. The Bureau is not currently persuaded that this would occur for several reasons.

First, the Bureau notes that some innovation in consumer financial markets can disserve the interest of consumers and the public and that deterring such innovation actually would advance the public interest. For example, a major cause of the financial crisis was "innovation" in the mortgage market—innovation that led to the introduction of a set of high-risk products and underwriting practices.[428] Similarly, Congress enacted the CARD Act in response to "innovation" in the credit card marketplace—such as the practice of triggering interest rate hikes based on "universal default"—that made the pricing of credit cards more opaque and unpredictable for consumers and distorted what was then the second largest consumer credit market.[429]

Conversely, the Bureau notes that some innovation is designed to mitigate risk. For example, many banks and credit unions are experimenting with "safe" checking accounts (accounts that do not allow consumers to overdraft) these products are designed to reduce overdraft risks to consumers. Similarly, some credit card issuers have experimented with products with fewer or no penalty fees as a means of reducing risk to consumers. The Bureau believes that to extent that the class proposal would affect positive innovations of this type, it would tend to facilitate them.

The Bureau recognizes that there may be some innovation that is designed to serve the needs of consumers but that leverages new technologies or approaches to consumer finance in ways that raise novel legal questions and, in that sense, carry legal risk. The Bureau believes that these innovators, in general, consider a variety of concerns when bringing their ideas to market. But, even if at the margin, the effect of the proposed rule would be to deter certain innovations from being launched, the Bureau believes that, on balance, that would be a price worth paying in order to achieve the benefits of the rule for the public and consumers. The Bureau believes that, in general, it is a mark of a well-functioning regulatory regime when entities must balance their desire to profit from innovation with the need to comply with laws designed to protect consumers.[430] The Bureau thus preliminarily finds that the impact of the class proposal on innovation supports rather than refutes a finding that the class proposal would be in the public interest because it would incentivize providers to reach the right balance between innovation in the marketplace and consumer protection.

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[425] In the Section-by-Section Analysis to proposed § 1040.4(a), the Bureau specifically addresses certain concerns related to the class proposal and its costs. That discussion is incorporated in this section 1028(b) analysis by reference. The Bureau also in that discussion seeks comment whether it should exempt small entities from the proposed rule. The Bureau discusses further potential alternatives below in the Bureau's IRFA.

[426] Some stakeholders have suggested that providers would incur costs that produce no benefits by engaging in compliance management activities that would not result in any changes in the providers' behaviors. According to this view, providers would sustain an increase in compliance costs without any actual change in behavior or added compliance by, for example, double or triple checking previous compliance efforts. However, the Bureau would not expect a firm to waste money confirming that it already complies when it receives no benefit in exchange for that investment. In addition, as the examples cited above suggest, class actions can assist firms in locating areas where their compliance efforts may be insufficient and allow them to focus their increased compliance efforts in areas where private actions are most likely.

[427] As is noted below, the impacts might be higher for some markets.

[428] *See* Fin. Crisis Inquiry Comm'n, *The Financial Crisis Inquiry Report,* at 104–05 (2011), *available at https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf* (discussing creation of a larger, new, subprime mortgage market, expanded use of high-risk products such as certain adjustable rate mortgages, and looser underwriting practices).

[429] *See* Bureau of Consumer Fin Prot., *CARD Act Report,* at 27, 74 (2013), *available at http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf*; 15 U.S.C. 1666i–i.

[430] *See* Dan Quan, *Project Catalyst: We're open to innovative approaches to benefit consumers* (Oct. 10, 2014), *http://www.consumerfinance.gov/blog/*

Windfalls. Some stakeholders have suggested that the class proposal would allow named plaintiffs in putative class actions to leverage the threat of a class action to obtain a windfall individual recovery. Others go further and suggest that the class proposal would result in windfall recoveries to entire classes on the grounds that the certification of a class would induce providers to settle claims with little or no merit because of the litigation expenses and risk of massive recoveries. Relatedly, some stakeholders have expressed concern that small businesses are particularly vulnerable to this scenario and that they feel even greater pressure to settle cases upon class certification because the value of the claim may constitute a substantial portion of the small business's net worth.

The Bureau recognizes that there is some risk that the class proposal would enable some plaintiffs to file putative class actions and leverage the threat of class liability to obtain a more favorable settlement than could have been obtained in an action filed on an individual basis in the first instance. However, the Study finds that for most consumers the value of their individual claim is too small to be worth pursuing individually, and the Bureau does not believe that the ability to file a putative class action would materially change consumers' interest in pursuing individual relief. The Section 1022(b)(2) Analysis quantifies the potential costs from putative class actions not settled on a class basis and finds those costs to be relatively low.[431]

With respect to the suggestion that the class proposal would result in windfalls to entire classes, the Study showed that certification almost invariably occurs coincident with a settlement and thus is not typically the force that drives settlement. The Study further found that not infrequently, settlements follow a decision by a court rejecting a dispositive motion (*e.g.*, a motion to dismiss) filed by the defendants. Moreover, the Bureau is not aware of any evidence to suggest that companies routinely settle cases on a class basis for more than their expected value, *i.e.*, more than the exposure to the class discounted by an assessment of the likelihood of success.[432] As discussed in the IRFA, the Bureau believes that the impacts on small providers are less severe than some stakeholders have argued, given that small providers are to class actions and other considerations.

In addition, Congress and the courts also continue to calibrate class action procedures to discourage frivolous litigation.[433] The Supreme Court, for example, has rendered a series of decisions making clear that Rule 23 "does not set forth a mere pleading standard" and establishing a number of requirements to subject putative class claims to close scrutiny before proceeding on a class basis.[434] Further, Congress has acted to limit frivolous litigation through various steps including enactment of CAFA. Similarly, stakeholders successfully lobbied Congress to remove an EFTA provision that led to a spike in class action litigation.[435]

Individual Dispute Resolution. Some companies and industry trade associations have argued that, if the class proposal were adopted, providers would likely remove their arbitration agreements entirely and this would impair consumers' ability to resolve their individual disputes. Other companies have told the Bureau that they would keep their arbitration agreements or that they remain undecided on what they would do. To the extent that providers would remove their arbitration agreements, the Bureau has heard two reasons. First, that if providers can no longer block class actions some stakeholders have stated that the arbitration agreement serves no purpose. Second, some stakeholders have suggested that establishing and maintaining a system to resolve disputes in arbitration is costly and that providers might have no incentive to provide consumers with the benefits of arbitration if they are also required to incur increased costs in defending class actions.

As for those asserting the first reason, the Bureau believes that, to the extent these providers find that the arbitration agreement provides no benefit to themselves or their consumers in individual disputes, then it is possible the agreement would not be maintained under the class proposal. For such providers, however, the Bureau believes the arbitration agreement has thus effectively been serving no function other than a class action waiver and would have no impact on their individual dispute resolution processes.

As for those asserting this second reason, the Bureau is not persuaded for the reasons discussed here and in the Section 1022(b)(2) Analysis. These firms must already maintain two systems to the extent that most arbitration agreements allow for litigation in small claims courts, and companies almost never seek to compel other cases to arbitration when first filed in court. The Bureau does not believe that, to the extent there is a burden of maintaining arbitration agreements to resolve individual disputes, the availability of class actions would impact that burden which exists regardless. Companies will always have to defend and resolve individual disputes that their customers bring—whether in court or in

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category/project-catalyst/ ("Consumer-friendly innovation can drive down costs, improve transparency, and make people's lives better. On the other hand, new products can also pose unexpected risks to consumers through dangers such as hidden costs or confusing terms.").

[431] The Study demonstrated that the number of putative class cases resulting in individual outcomes is itself quite low, showing each year an average of100 putative class actions filed in Federal courts and a sample of State courts relating to six significant markets were resolved in a manner that included an individual settlement or a potential individual settlement. Study, *supra* note 2, section 6 at 42, fig. 12; *id.*, app. O at 106 tbl. 19 (covering settlements that represent nearly a fifth of the population). As a matter of absolute impact, individual settlements in 100 cases per year (even when extrapolated to other markets and all State courts) are not significant enough to pose a substantial per-account cost to providers and thus are unlikely to result in a significant price increase to consumers, as discussed in Section 1022(b)(2) Analysis below.

[432] *See, e.g., In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 383 (S.D.N.Y. 2013) (noting that securities settlement was relatively low due to "the risk that the plaintiffs might not prevail was significant"); *see also* Wright, Miller & Kane, 7A Fed. Prac. & Proc. Civ. 1797.1, at 82–88 (3d ed.) (identifying factors for district court's determination of the fairness of proposed relief for a class settlement, including "the likelihood of the class being successful in the litigation" and "the amount proposed as compared to the amount that might be recovered, less litigation costs, if the action went forward"); *Reynolds* v. *Beneficial Nat'l Bank,* 288 F.3d 277, 285 (7th Cir. 2002) (Posner, J.) (reversing order approving settlement agreement where the "judge made no effort to translate his intuitions about the strength of the plaintiffs' case, the range of possible damages, and the likely duration of the litigation if it was not settled now into numbers that would permit a responsible evaluation of the reasonableness of the settlement").

[433] *Reiter,* 442 U.S. at 345 ("District courts must be especially alert to identify frivolous claims brought to extort nuisance settlements; they have broad power and discretion vested in them by Fed. Rule Civ. Proc. 23 with respect to matters involving the certification and management of potentially cumbersome or frivolous class actions.").

[434] *Wal-Mart Stores, Inc.* v. *Dukes,* 564 U.S. 338, 350 (2011).

[435] *See, e.g.*, Kevin Bogardus, *Banks lobby to repeal ATM fee signs,* The Hill (June 19, 2012), *available at http://thehill.com/business-a-lobbying/233393-bank-lobby-says-congress-should-repeal-atm-signs*. Stakeholders are now undertaking similar efforts with respect to other substantive statutes.

arbitration. In these individual disputes, companies will always incur defense costs and oftentimes settlement costs. While some companies may have to pay fees to the arbitration administrators that they would not have to pay in court, the empirical evidence indicates that the absolute number of cases in which these fees are incurred is low (and that the total fees in any one case are also low).[436] Moreover, the costs of the up front fees would be offset against potential savings from arbitration's streamlined discovery and other processes, which some stakeholders have argued are a substantial benefit to all parties. Thus, the Bureau does not see why the costs of resolving a few cases in arbitration, even if somewhat greater than resolving these cases in litigation, would alone cause companies to withdraw an option that they often assert benefits both themselves and consumers.

Nor is the Bureau persuaded that if providers eliminated their arbitration agreements that doing so would affect their incentives to resolve disputes informally. As previously noted, the Bureau recognizes that when an individual consumer complains about a particular charge or other action, it is often in the financial institution's interest to preserve the customer relationship by providing the individual with a response explaining that charge and, in some cases, a full or partial refund or reversal of the charge or action. That incentive would not be affected by the elimination of arbitration agreements. The Bureau is skeptical that the risk of individual; litigation is a significant driver of companies' decisions to resolve disputes informally given how infrequently individual cases are filed either in court or arbitration, and the Bureau is also skeptical that if providers were subject to court litigation but not arbitration that would substantially change their assessment of the risk and hence their willingness to provide an informal resolution.

Thus, the Bureau does not preliminarily find that individual dispute resolution (whether formal or informal) is an adequate substitute for group litigation that can provide many consumers relief in a single proceeding.

The Bureau seeks comments on its preliminary findings discussed above that the class proposal would be in the public interest and for the protection of consumers.

D. The Bureau Finds That the Monitoring Proposal Is in the Public Interest and for the Protection of Consumers

The class proposal would not prohibit covered entities from continuing to include arbitration agreements in consumer financial contracts generally; providers would still be able to include them in consumer contracts and invoke them to compel arbitration in court cases not filed in court as class actions. In addition, the class proposal would not foreclose the possibility of class arbitration so long as the consumer chooses arbitration as the forum in which he or she pursues the class claims and the applicable arbitration agreement does not prohibit class arbitration. Thus, the Bureau separately considers whether the other requirement of its proposal—that providers submit certain arbitral records to the Bureau (proposed § 1040.4(b)), the monitoring proposal)—would be in the public interest and for the protection of consumers.

As explained in Part VI.A, the evidence before the Bureau is inconclusive as to the relative efficacy and fairness of individual arbitration compared to individual litigation. Thus, the Bureau is not proposing to prohibit arbitration agreements entirely. The Bureau remains concerned, however, that the potential for consumer harm in the use of arbitration agreements in the resolution of individual disputes remains. Among these concerns is that arbitrations could be administered by biased administrators (as was alleged in the case of NAF), that harmful arbitration provisions could be enforced, or that individual arbitrations could otherwise be conducted in an unfair manner.

The Study showed that, in the markets covered by the Study, an overwhelming majority of arbitration agreements specify AAA or JAMS as an administrator (or both) and both administrators have created consumer arbitration protocols that contain procedural and substantive safeguards designed to ensure a fair process.[437] While the Bureau believes that these safeguards currently apply to the vast majority of consumer finance arbitrations that do occur, this could change. Administrators may change the safeguards in ways that could harm consumers, companies may (and currently do) select other arbitrators or arbitration administrators that adopt different standards of conduct or operate with no standards at all (*e.g.*, a company may choose an individual as an arbitrator who conducts the arbitration according to his or her own rules), arbitration agreements may contain provisions that could harm consumers, or the use of arbitration to resolve consumer disputes may evolve in other ways that the Bureau cannot foresee, particularly were the class proposal to be adopted. For these reasons, the Bureau preliminarily finds that the proposed rule requiring submission of arbitral documents would be in the public interest and for the protection of consumers.

Overview of the Monitoring Proposal

The Bureau is neither proposing to restrict the use of arbitration agreements with respect to individual arbitrations nor proposing to prescribe specific methods or standards for adjudicating individual arbitrations. The Bureau is instead proposing a system that would allow it and, potentially the public, to review certain arbitration materials. The Bureau expects that its proposed requirements would bring greater transparency to the arbitration process and allow for the Bureau and, potentially, the public to monitor how arbitration evolves.

Specifically, the Bureau is proposing a regime that would require providers to submit five types of documents with respect to any individual arbitration case (see proposed § 1040.4(b)(1)): (1) the initial claim (whether filed by a consumer or by the provider) and any counterclaim; (2) the pre-dispute arbitration agreement filed with the arbitrator or arbitration administrator; (3) the award, if any, issued by the arbitrator or arbitration administrator; (4) any communications from the arbitrator or arbitration administrator with whom the claim was filed relating to a refusal to administer or dismissal of a claim due to the provider's failure to pay required fees; and (5) any communications related to a determination that an arbitration agreement does not comply with the administrator's fairness principles.

Under the monitoring proposal, the Bureau would publish on its Web site the materials it receives in some form, with appropriate redaction or aggregation as warranted.

The Bureau Believes That the Monitoring Proposal Would Have Several Positive Outcomes for Consumers and the Public

The Bureau preliminarily finds that the monitoring proposal would have several positive outcomes that, taken into consideration with other relevant factors including costs, would be in the public interest and for the protection of consumers.

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[436] *See* Study, *supra* note 2, section 5 at 75–76.

[437] *Id.*, section 2 at 34–40; *see generally id.*, section 4.

First, the monitoring proposal would be for the protection of consumers because it would allow the Bureau (and if submissions are published, the public) to better understand arbitrations that occur now and in the future and to ensure that consumers' rights are being protected. The materials the Bureau proposes to collect—similar to the AAA materials the Bureau reviewed in the Study—would allow the Bureau to continue to monitor how arbitrations and arbitration agreements evolve, and allow it to see whether they evolve in ways that harm consumers.

The documents the Bureau proposes to collect would provide the Bureau with different insights. For example, collection of arbitration claims would provide transparency regarding the types of claims consumers and providers are bringing to arbitration. Collecting claims would allow the Bureau to monitor the raw number of arbitrations, which has fluctuated over time, from at least tens of thousands of provider-filed arbitration claims per year before mid-2009, to just hundreds per year in the AAA set reviewed by the Bureau.[438] Rapid changes in the number of claims might signal a return to large-scale debt collection arbitrations by companies and potential consumer protection issues, as had occurred in the past with NAF (discussed above in Part II.C).

The proposed collection of awards would provide insights into the types of claims that reach the point of adjudication and the way in which arbitrators resolve these claims. Collection of arbitration agreements in conjunction with the claims (and awards) would allow the Bureau to monitor the impact that particular clauses in arbitration agreements have on consumers and providers, the resolution of those claims, and how arbitration agreements evolve. Finally, collection of correspondence regarding non-payment of fees and non-compliance with due process principles would allow the Bureau insight into whether and to what extent providers fail to meet the arbitral administrators' standards. Those consumers that may be harmed by these providers' non-payment of fees or failure to adhere to fairness principles would also benefit by having those instances reported to the Bureau for potential further action. The Bureau believes that it is possible that the increased transparency arising from the monitoring proposal and the Bureau's publication of materials it receives may deter some unfair individual arbitrations because providers would have an interest in protecting their reputations and they themselves may be wary to retain an arbitrator or arbitration administrator that proceeds in an unfair manner.

Beyond shedding light on the operation of the arbitration system writ large, the proposed collection of documents also would enhance the Bureau's ability to monitor consumer finance markets for risks to consumers. For example, the collection of claims and awards would provide the Bureau with additional information about the types of potential violations of consumer finance or other laws alleged in arbitration and whether any particular providers are facing repeat claims or have engaged in potentially illegal practices. At the same time, the collection of arbitration agreements and correspondence regarding non-payment of fees or non-compliance with fairness standards would enable the Bureau to identify providers that may have adopted one-sided agreements in an attempt to avoid liability altogether by discouraging a consumer from seeking resolution of a claim in arbitration.

Second, the monitoring proposal would be for the protection of consumers because it would allow the Bureau to take action against providers that are engaging in potentially illegal actions that impede consumers' ability to bring claims against their providers. For example, if the Bureau became aware that a particular company was routinely not paying arbitration fees, it could take action against that company or refer its conduct to another regulator. The Bureau intends to draw upon all of its statutorily authorized tools to address conduct that harms consumers that may occur in the future in connection with providers' use of arbitration agreements.

The Bureau also preliminarily finds that the monitoring proposal would be in the public interest for all of the reasons set forth above as to why it would be for the protection of consumers and for the following additional reasons.

First, it would allow the Bureau to better evaluate whether the Federal consumer finance laws are being enforced consistently. The public interest analysis is informed by one of the purposes of the Bureau, which is to "enforce Federal consumer financial law consistently."[439] Through the window into arbitrations provided by the monitoring proposal, the Bureau would be better able to know whether arbitral decisions are applying the laws consistently on an ongoing basis and whether any consumer protection issues arise in those cases that warrant further action by the Bureau.

Second, by allowing the Bureau access to documents about the conduct of arbitrations, the Bureau would be able to learn of and assess consumer allegations that providers have violated the law and, more generally, determine whether arbitrations proceed in a fair and efficient manner. The Bureau believes that creating a system of accountability is an important part of any dispute resolution system. By creating a mechanism through which the Bureau can monitor whether the system is being abused, the Bureau can further the public interest in maintaining a functioning, fair, and efficient arbitration system.

Third, the Bureau preliminarily finds that the monitoring proposal would be in the public interest to the extent that the Bureau publishes the materials it collects because publication would further the Bureau's goal of transparency in the financial markets. The Bureau believes that publishing claims would provide transparency by revealing to the public the types of claims filed in arbitration and whether consumers or providers are filing the claims. Publishing awards would provide transparency by revealing how different arbitrators decide cases and signaling to attorneys for consumers and providers which sorts of cases favor and do not favor consumers, thereby potentially facilitating better pre-arbitration case assessment and resolution of more disputes by informal means.[440] Publication may also help develop a more general understanding among consumers of the facts and law at issue in consumer financial arbitrations.

Further, consumers, public enforcement agencies, and attorneys for consumers and providers would be able to review the records and identify trends that warrant further action including, for example, when firms do not pay fees or violate administrators' fairness rules. These groups routinely use public databases, such as online court records, decision databases, and government complaint databases (*e.g.*, the Bureau's complaint database, various states' arbitration disclosure requirements, and the FTC's Sentinel database) today in conducting their work. Making awards public may also generate public confidence in the arbitrators selected for a specific case as well as the arbitration system, at least for administrators whose awards tend to demonstrate fairness and impartiality.

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[438] *See, e.g.*, Preliminary Results, *supra* note 2 at 60–62.

[439] *See generally* Dodd-Frank section 1021(b) (setting forth the Bureau's purposes).

[440] The Bureau already publishes certain narratives and outcomes data concerning consumer complaints submitted with the Bureau. The Bureau has explained that it publishes this material because it "believes that greater transparency of information does tend to improve customer service and identify patterns in the treatment of consumers, leading to stronger compliance mechanisms and customer service. . . . In addition, disclosure of consumer narratives will provide companies with greater insight into issues and challenges occurring across their markets, which can supplement their own company-specific perspectives and lend more insight into appropriate practices." Bureau of Consumer Fin. Prot., Disclosure of Consumer Complaint Narrative Data, 80 FR 15572, 15576 (Mar. 24, 2015).

In these ways, the monitoring proposal would improve the ability of a broad range of stakeholders to understand whether markets for consumer financial products and services are operating in a fair and transparent manner.

The Bureau believes that the compliance burden on providers of the monitoring proposal would be sufficiently low that, especially given the benefits of the proposal, it would not be a significant factor weighing against the proposal being in the public interest.[441] As discussed in greater detail in the Section 1022(b)(2) Analysis below, the Bureau expects that, unless the use of arbitration changes dramatically, the number of arbitrations subject to this part of the monitoring proposal would remain low. Most providers would have no obligations under the monitoring proposal in any given year because most providers do not face even one consumer arbitration in a year. In any event, the burden of redacting and submitting materials would be relatively minimal.

The Bureau has also considered whether the monitoring proposal, in making claims submitted in arbitration and decisions resolving those claims transparent, would somehow adversely impact the arbitration process. While there conceivably could be other negative impacts on consumers' engagement in the arbitration process arising from adoption of the monitoring proposal, the key potential concern thus far identified by the Bureau would be the concern that consumers would be less likely to engage in arbitration because they feared that submission and possible publication would cause information about them to be divulged. However, the Bureau does not believe that this concern would materialize because the proposal would require the redaction of information that identifies consumers.

With respect to providers, the Bureau does not believe that they should be able to maintain secrecy around their disputes with customers (insofar as the Bureau's Consumer Response function publishes the names of providers). Furthermore, the Bureau notes that expectations of privacy are reduced to the extent arbitration awards and other documents containing parties' names and other information are filed with a court, such as in an effort to enforce an award. Relatedly, the Bureau notes that AAA, which is the largest administrator of consumer arbitrations, maintains consumer rules that permit it to publish consumer awards, and thus providers are already on notice that arbitrations they are involved in might become public.[442]

The Bureau seeks comment on all aspects of its determination that the monitoring proposal would be in the public interest and for the protection of consumers. The Bureau also seeks comment on whether consumers should be able to opt-out of the Bureau's publication of documents related to the arbitrations in which they participate.

VII. Section-by-Section Analysis

The Bureau is proposing to create 12 CFR part 1040, which would set forth regulations regarding arbitration agreements. Below, the Bureau explains each of the proposed subsections and commentary thereto for proposed part 1040.

Section 1040.1 Authority, Purpose, and Enforcement

The first section of proposed part 1040 would set forth the Bureau's authority for issuing the regulation and the regulation's purpose.

1(a) Authority

Proposed § 1040.1(a) would state that the Bureau is issuing this proposed rule pursuant to the authority granted to it by Dodd-Frank sections 1022(b)(1), 1022(c), and 1028(b). As described in Part V, Dodd-Frank section 1022(b)(1) authorizes the Bureau to prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. Section 1022(c)(4) authorizes the Bureau to monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services. Dodd-Frank section 1028(b) states that the Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. Section 1028(b) further states that the findings in such rule shall be consistent with the study conducted under Dodd-Frank section 1028(a).

1(b) Purpose

As part of its authority under Dodd-Frank section 1028(b), the Bureau may prohibit or impose conditions or limitations on the use of pre-dispute arbitration agreements if the Bureau finds that they are "in the public interest and for the protection of consumers." Proposed § 1040.1(b) would state that the proposed rule's purpose is to further these objectives. Dodd-Frank section 1028(b) also requires the findings in any rule issued under section 1028(b) to be consistent with the Study conducted under section 1028(a), which directs the Bureau to study the use of pre-dispute arbitration agreements in connection with the offering or providing of consumer financial products or services. For the reasons described above in Part VI the Bureau believes the preliminary findings in this proposed rule are consistent with the Study.

Section 1040.2 Definitions

In proposed § 1040.2, the Bureau proposes to set forth certain terms used in the regulation that the Bureau believes it is appropriate to define.

2(a) Class Action

The substantive provisions of proposed § 1040.4(a)(1), discussed below, concern class actions; thus, the Bureau is proposing to define "class action." The Bureau believes that the term class action is broadly understood to mean a lawsuit in which one or more parties seek to proceed as a representative of other similarly situated class members pursuant to Rule 23 of the Federal Rules of Civil Procedure or any State process analogous to Rule 23. This term refers to cases in which one or more parties seek class treatment regardless of when class treatment is sought; it should not be limited to cases filed initially as class actions. The Bureau intends "State process analogous to Rule 23" to refer to any State process substantially similar to the various iterations of Rule 23 since its adoption. Proposed § 1040.2(a) would adopt this definition of class action and also clarify that this rule would apply to class actions filed in State court. The Bureau seeks comment on whether the proposed definition of class action would be appropriate. The Bureau further seeks comment on whether the Bureau should use "State process analogous to Rule 23" or an alternative formulation that may be broader or narrower, and what types of cases would be captured or excluded by such an alternative formulation.

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[441] The Bureau preliminarily finds that none of the remaining factors that it previously identified as being relevant to the public interest analysis under section 1028 is relevant to the analysis whether the monitoring proposal would be in the public interest but seeks comment on whether it should consider additional or different criteria.

[442] AAA, Consumer Arbitration Rules (amended effective Sept. 1, 2014), R–43(c) ("The AAA may choose to publish an award rendered under these Rules; however, the names of the parties and witnesses will be removed from awards that are published, unless a party agrees in writing to have its name included in the award."). The AAA also provides public access to arbitration demands and awards for all class arbitrations (including party names). *See* AAA, Class Arbitration Case Docket (last visited May 1, 2016) *https://www.adr.org/aaa/faces/services/disputeresolutionservices/casedocket.*

2(b) Consumer

Dodd-Frank section 1028(b) authorizes the Bureau to issue regulations concerning pre-dispute arbitration agreements between a covered person and a "consumer." Dodd-Frank section 1002(4) defines the term consumer as an individual or an agent, trustee, or representative acting on behalf of an individual. Proposed § 1040.2(b) would borrow the definition of consumer from the Dodd-Frank Act and state that a consumer is an individual or an agent, trustee, or representative acting on behalf of an individual. The Bureau seeks comment on whether the proposed definition would be appropriate and whether it should consider other definitions of the term consumer.

2(c) Provider

Dodd-Frank section 1028(b) authorizes the Bureau to issue regulations concerning pre-dispute arbitration agreements between a "covered person" and a consumer. Dodd-Frank section 1002(6) defines the term "covered person" as any person that engages in offering or providing a consumer financial product or service and any affiliate of such a person if such affiliate acts as a service provider to that person. Section 1002(19) further defines person to mean an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

Throughout the proposed rule, the Bureau uses the term "provider" to refer to the entity to which the requirements in the proposed rule would apply. For example, proposed § 1040.4(a)(1), discussed below, would prohibit providers from seeking to rely in any way on a pre-dispute arbitration agreement entered into after the compliance date set forth in proposed § 1040.5(a) ("compliance date") with respect to any aspect of a class action that is related to any of the consumer financial products or services covered by proposed § 1040.3.

Proposed § 1040.2(c) would define provider as a subset of the term covered person. In doing so, proposed § 1040.2(c) would clarify that the proposed rule's intended coverage would be within the parameters of the Bureau's authority under Dodd-Frank section 1028(b). Specifically, proposed § 1040.2(c) would define the term provider to mean (1) a person as defined by Dodd-Frank section 1002(19) that engages in offering or providing any of the consumer financial products or services covered by proposed § 1040.3(a) to the extent that the person is not excluded under proposed § 1040.3(b); or (2) an affiliate of a provider as defined in proposed § 1040.2(c)(1) when that affiliate would be acting as a service provider to the provider with which the service provider is affiliated consistent with the meaning set forth in 12 U.S.C. 5481(6)(B). The Bureau derives this formulation from the definition of covered person in Dodd-Frank section 1002(6), 12 U.SC. 5481(6)(B).

The definition of the term "person" includes the phrase "or other entity." That term readily encompasses governments and government entities. Even if the term were ambiguous, the Bureau believes—based on its expertise and experience with respect to consumer financial markets—that interpreting it to encompass governments and government entities would promote the consumer protection, fair competition, and other objectives of the Dodd-Frank Act. The Bureau also believes that the terms "companies " or "corporations" under the definition of "person," on their face, cover all companies and corporations, including government-owned or -affiliated companies and corporations. And even if those terms were ambiguous, the Bureau believes—based on its expertise and experience with respect to consumer financial markets—that interpreting them to cover government-owned or -affiliated companies and corporations would promote the objectives of the Dodd-Frank Act.

The Bureau notes that proposed § 1040.4(a)(1), discussed below, would apply to providers with respect to pre-dispute arbitration agreements entered into by *other persons* after the compliance date, even if that other person is excluded for coverage by proposed § 1040.3(b). For further discussion of this issue, see the discussion of proposed comment 4–2, below.

The Bureau intends the phrase "that engages in offering or providing any of the consumer financial products or services covered by § 1040.3(a)" to clarify that the proposed rule would apply to providers that use a pre-dispute arbitration agreement entered into with a consumer for the products and services enumerated in proposed § 1040.3(a). The Bureau also intends this phrase to convey that, even if an entity would be a provider under proposed § 1040.2(c) because it offers or provides consumer financial products or services covered by proposed § 1040.3(a), it would not be a provider with respect to products and services that it may provide that are not covered by proposed § 1040.3(a).

Proposed comment 2(c)–1 would further clarify this issue and explain that a provider as defined in proposed § 1040.2(c) that also engages in offering or providing products or services not covered by proposed § 1040.3(a) must comply with this part only for the products or services that it offers or provides that are covered by proposed § 1040.3(a). The proposed comment would clarify that, where an entity would be a provider because it offers or provides at least one covered product or service, it need not comply with this part with respect to all its products and services; it need comply only with respect to those that are covered by proposed § 1040.3(a).

The Bureau seeks comment on the proposed definition of provider, including whether proposed comment 2(c)–1 clarifies the scope of the term.

2(d) Pre-Dispute Arbitration Agreement

Proposed § 1040.2(d) would define the term pre-dispute arbitration agreement as an agreement between a provider and a consumer providing for arbitration of any future dispute between the parties. The Bureau's proposed definition of pre-dispute arbitration agreement is based on Dodd-Frank section 1028(b), which authorizes the Bureau to regulate the use of such agreements.

The Bureau believes that the meaning of the term arbitration is widely understood. As such, the Bureau is not proposing to define it. The Bureau seeks comment, however, on whether the term arbitration should be defined, and, if so, how and why. The Bureau further notes that, in the proposed definition of "pre-dispute arbitration agreement," the phrase "providing for arbitration of any future dispute between the parties" would include agreements between providers and consumers under which, if one sues the other in court, either party can invoke the arbitration agreement to require that the dispute proceed, if at all, in arbitration instead.

Proposed comment 2(d)–1 would state that a pre-dispute arbitration agreement for a consumer financial product or service includes any agreement between a provider and a consumer providing for arbitration of any future disputes between the parties, regardless of its form or structure. The proposed comment would provide two illustrative examples: (1) A standalone pre-dispute arbitration agreement that applies to a product or service; and (2) a pre-dispute arbitration agreement that is included within, annexed to, incorporated into, or otherwise made a part of a larger agreement that governs the terms of the provision of a product or service. This comment would help clarify that "pre-dispute arbitration agreement" would not be limited to a standalone "agreement" but could be a provision within an agreement for a consumer financial product or service.

The Bureau is not aware of any Federal regulation that defines the term pre-dispute arbitration agreement but seeks comment on whether the proposed text—which restates the relevant statutory provision—would provide sufficient guidance as to when an arbitration agreement is "pre-dispute." This proposed definition of pre-dispute arbitration agreement would not include a voluntary arbitration agreement between a consumer and a covered person after a dispute has arisen. The Bureau seeks comment on whether the Bureau should define or provide additional clarification regarding when an arbitration agreement is "pre-dispute."

Section 1040.3 Coverage

As discussed above, Dodd-Frank section 1028(b) authorizes the Bureau to issue regulations concerning agreements between a covered person and a consumer "for a consumer financial product or service" providing for arbitration of any future disputes that may arise. Accordingly, proposed § 1040.3 would set forth the products and services to which proposed part 1040 applies. Proposed § 1040.3(a) generally would provide a list of products and services that would be covered by the proposed rule, while proposed § 1040.3(b) would provide limited exclusions.

The Bureau is proposing to cover a variety of consumer financial products and services that the Bureau believes are in or tied to the core consumer financial markets of lending money, storing money, and moving or exchanging money—all markets covered in significant part in the Study. These include, for example: (1) Most types of consumer lending (such as making secured loans or unsecured loans or issuing credit cards), activities related to that consumer lending (such as providing referrals, servicing, credit monitoring, debt relief, and debt collection services, among others, as well as the purchasing or acquiring of such consumer loans), and extending and brokering those automobile leases that are consumer financial products or services; (2) storing funds or other monetary value for consumers (such as providing deposit accounts); and (3) providing consumer services related to the movement or conversion of money (such as certain types of payment processing activities, transmitting and exchanging funds, and cashing checks).

Proposed § 1040.3(a) would describe the products and services in these core consumer financial markets that would be covered by part 1040. Each component is discussed separately below in the discussion of each subsection of proposed § 1040.3(a).[443] The Bureau notes that both banks and nonbanks may provide these products and services. As discussed above in connection with the definition of "provider" in proposed § 1040.2(c) and below in this section and in the Bureau's analysis under Dodd-Frank section 1022(b)(2), a covered person under the Dodd-Frank Act who engages in offering or providing a product or service described in proposed § 1040.3(a) generally would be subject to the proposed rule, except to the extent an exclusion in proposed § 1040.3(b) applies to that person.

1040.3(a) Covered Products and Services

As set forth above, the Bureau's rulemaking authority under Dodd-Frank section 1028(b) generally extends to the use of an agreement between a covered person and a consumer for a "consumer financial product or service" (as defined in Dodd-Frank section 1002(5)). However, as discussed in the Section-by-Section Analysis of proposed § 1040.3(b)(5), Dodd-Frank sections 1027 and 1029 (codified at 12 U.S.C. 5517 and 5519) exclude certain activities by certain covered persons, such as the sale of nonfinancial goods or services, including automobiles, from the Bureau's rulemaking authority in certain circumstances.[444]

In exercising its authority under section 1028, the Bureau is proposing to cover consumer financial products and services in what it believes are core markets of lending money, storing money, and moving or exchanging money. Accordingly, the Bureau is not, at this time, proposing to cover every type of consumer financial product or service as defined in Dodd-Frank section 1002(5), particularly those outside these three core areas, though the Bureau would continue to monitor markets for consumer financial products and services both those that would and would not be within the proposed scope and may at a later time revisit the scope of this proposed rule.

In addition, the Bureau is proposing coverage of core product markets in a way that the Bureau believes would facilitate compliance because several terms in the proposed scope provisions are derived from existing, enumerated consumer financial protection statutes implemented by the Bureau. In so doing, the Bureau expects that the coverage of proposed Part 1040 would incorporate relevant future changes, if any, to the enumerated consumer financial protection statutes and their implementing regulations and to provisions of Title X of Dodd-Frank referenced in proposed § 1040.3(a). For example, changes that the Bureau has proposed regarding the definition of an account under Regulation E would, if adopted, affect the scope of proposed § 1040.3(a)(6).

Specifically, the Bureau is proposing in § 1040.3(a) that proposed part 1040 generally would apply to pre-dispute arbitration agreements for the products or services listed in proposed § 1040.3(a) to the extent they are consumer financial products or services as defined by 12 U.S.C. 5481(5). As proposed comment 3(a)–1 would explain, that provision generally defines two types of consumer financial products and services. The first type is any financial product or service that is "offered or provided for use by consumers primarily for personal, family, or household purposes." The second type is a financial product or service that is delivered, offered, or provided in connection with the first type of consumer financial product or service.

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[443] Following that discussion, an illustrative set of examples of persons providing these products and services is included in the introduction of the Section-by-Section Analysis to proposed § 1040.3(b).

[444] However, as also discussed in greater detail in proposed § 1040.3(b)(5), even where the person offering or providing a consumer financial product or service may be excluded from coverage under the regulation, for instance because that party is an automobile dealer extending a loan in circumstances that exempt the automobile dealer from the rulemaking authority of the Bureau under Dodd-Frank section 1029, the rule would still apply to providers of other consumer financial products or services (such as servicers or debt collectors) in connection with the same loan.

The Bureau seeks comment on all aspects of its proposed approach to coverage in this proposed rulemaking. Specifically, the Bureau seeks comment on whether any products or services that the Bureau has proposed to cover should not be covered, and whether any types of consumer financial products or services that it has not proposed to cover should be covered. The Bureau further seeks comment on its approach to referencing terms in enumerated consumer financial protection statutes and Dodd-Frank sections (and their respective implementing regulations) as set forth in proposed § 1040.3, and the fact that future changes to these terms may affect the scope of the proposed rule.

1040.3(a)(1)

The Bureau believes that the proposed rule should apply to consumer credit and related activities including collecting on consumer credit. Specifically, proposed § 1040.3(a)(1) would include in the coverage of proposed part 1040 consumer lending under ECOA, 15 U.S.C. 1691 *et seq.*, as implemented by Regulation B, 12 CFR part 1002, and activities related to that lending.[445]

In particular, proposed § 1040.3(a)(1) would cover specific consumer lending activities engaged in by persons acting as "creditors" as defined by Regulation B, along with the related activities of acquiring, purchasing, selling, or servicing such consumer credit. Proposed § 1040.3(a)(1) breaks these covered consumer financial products or services into the following five types: (1) Providing an "extension of credit" that is "consumer credit" as defined in Regulation B, 12 CFR 1002.2; (2) acting as a "creditor" as defined by 12 CFR 1002.2(l) by "regularly participat[ing] in a credit decision" consistent with its meaning in 12 CFR 1002.2(l) concerning "consumer credit" as defined by 12 CFR 1002.2(h); (3) acting, as a person's primary business activity, as a "creditor" as defined by 12 CFR 1002.2(l) by "refer[ring] applicants or prospective applicants to creditors, or select[ing] or offer[ing] to select creditors to whom requests for credit may be made" consistent with its meaning in 12 CFR 1002.2(l); (4) acquiring, purchasing, or selling an extension of consumer credit covered by proposed § 1040.3(a)(1)(i); or (5) servicing an extension of consumer credit covered by proposed § 1040.3(a)(1)(i).

1040.3(a)(1)(i) and (ii)

Proposed § 1040.3(a)(1)(i) would cover providing any "extension of credit" that is "consumer credit" as defined by Regulation B, 12 CFR 1002.2.[446] In addition, proposed § 1040.3(a)(1)(ii) would cover acting as a "creditor" as defined by 12 CFR 1002.2(l) by "regularly participat[ing] in a credit decision" consistent with its meaning in 12 CFR 1002.2(l) concerning "consumer credit" as defined by 12 CFR 1002.2(h). Collectively, the coverage proposed in § 1040.3(a)(1)(i) and (ii) would reach creditors both when they approve consumer credit transactions and extend credit, as well as when they participate in decisions leading to the denial of applications for consumer credit. ECOA has applied to these activities since its enactment in the 1970s, and the Bureau believes that entities are familiar with the application of ECOA to their products and services. Regulation B, which implements ECOA, defines credit as "the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor." 12 CFR 1002.2(j).[447] By proposing to cover extensions of consumer credit and participation in consumer credit decisions already covered by ECOA as implemented by Regulation B, the Bureau expects that participants in the consumer credit market would have a significant body of experience and law to draw upon to understand how the proposed rule would apply to them, which would facilitate compliance with proposed part 1040.

As indicated in its SBREFA Outline, the Bureau had originally considered covering consumer credit under either of two statutory schemes: TILA or ECOA and their implementing regulations.[448] Upon further consideration, however, the Bureau believes that using a single definition would be simpler and thus it proposes to use the Regulation B definitions under ECOA because they are more inclusive. For example, unlike TILA and its implementation regulation (Regulation Z, 12 CFR 1026.2(17)(i)), ECOA and Regulation B do not include a blanket exclusion for credit with four or fewer installments and no finance charge. Regulation B also explicitly addresses participating in credit decisions, and as discussed below in the Section-by-Section Analysis to proposed § 1040.3(a)(1)(iii), loan brokering.

The Bureau further notes that in many circumstances, merchants, retailers, and other sellers of nonfinancial goods or services (hereafter, merchants) may act as creditors under ECOA in extending credit to consumers. While such extensions of consumer credit would be covered by proposed § 1040.3(a)(1), exemptions proposed in § 1040.3(b) may exclude the merchant itself from coverage. Those exemptions are discussed in detail in the corresponding part of the Section-by-Section Analysis further below. On the other hand, if a merchant creditor were not eligible for any of these proposed exemptions with respect to a particular extension of consumer credit, then proposed Part 1040 generally would apply to the merchant with respect to such transactions. For example, the Bureau believes merchant creditors significantly engaged in extending consumer credit with a finance charge often would be ineligible for these exemptions.[449]

1040.3(a)(1)(iii)

Proposed § 1040.3(a)(1)(iii) would cover persons who, as their primary business activity, act as "creditors" as defined by Regulation B, 12 CFR 1002.2(l), by engaging in any one or more of the following activities covered by Regulation B: referring consumers to other ECOA creditors, or selecting or offering to select such other creditors from whom the consumer may obtain ECOA credit. Regulation B comment 2(*l*)–2 describes examples of persons engaged in such activities.[450] Regularly engaging in these activities generally makes a person a creditor under Regulation B, 12 CFR 1002.2(l). Thus proposed § 1040.3(a)(1)(iii) would only apply to persons who are regularly engaging in these activities.[451]

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[445] The related activity of debt collection would be covered by proposed § 1040.3(a)(10).

[446] As noted in proposed comment 3(a)(1)(i)–1, Regulation B defines "credit" by reference to persons who meet the definition of "creditor" in Regulation B. 12 CFR 1002.2(l). Persons who do not regularly participate in credit decisions in the ordinary course of business, for example, are not creditors as defined by Regulation B. *Id.* In addition, by proposing to cover only credit that is "consumer credit" under Regulation B, the Bureau is making clear that the proposed rule would not apply to business loans.

[447] *See also* 12 CFR 1002.2(q) (Regulation B provision defining the terms "extend credit" and "extension of credit" as "the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity").

[448] SBREFA Outline at 22.

[449] Certain automobile dealers may still be exempt, however, under proposed § 1040.3(b)(5) when they are extending credit with a finance charge in circumstances that exclude the automobile dealer from the Bureau's rulemaking authority under Dodd-Frank section 1029. In addition, certain small entities may still be exempt under proposed § 1040.3(b)(5) in certain other circumstances, such as those specified in Dodd-Frank section 1027(a)(2)(D). A merchant that is a government or government affiliate also could be exempt under proposed § 1040.3(b)(2).

In addition, in this proposed rule, the Bureau does not generally propose to cover activities of merchants to facilitate payment for the merchants' own nonfinancial goods or services.[452] Accordingly, proposed § 1040.3(a)(1)(iii) would only apply to persons providing these types of referral or selection services as their primary business.[453] Thus, as proposed comment 3(a)(1)(iii)–1 would clarify, a merchant whose primary business activity consists of the sale of nonfinancial goods or services generally would not fall into this category. Proposed § 1040.3(a)(1)(iii) would not apply, for example, to a merchant that refers the consumer to a creditor to help the consumer purchase the merchant's own nonfinancial goods and services.[454]

1040.3(a)(1)(iv) and (v)

Proposed § 1040.3(a)(1)(iv) and (v) would cover certain specified types of consumer financial products or services when offered or provided with respect to consumer credit covered by proposed § 1040.3(a)(1)(i). First, proposed § 1040.3(a)(1)(iv) would cover acquiring, purchasing, or selling an extension of consumer credit covered by proposed § 1040.3(a)(1)(i). In addition, proposed § 1040.3(a)(1)(v) would cover servicing of an extension of consumer credit covered by proposed § 1040.3(a)(1)(i). With regard to servicing, the Bureau is not proposing a specific definition but, proposed comment 3(a)(1)(v)–1 would note other examples where the Bureau has defined servicing: For the postsecondary student loan market in 12 CFR 1090.106 and the mortgage market in Regulation X, 12 CFR 1024.2(b).[455]

The Bureau invites comment on proposed § 1040.3(a)(1) and related proposed commentary. In particular, the Bureau requests comment on defining coverage in proposed § 1040.3(a)(1) by reference to consumer lending activities carried out by "creditors" as defined by Regulation B, and the activities of acquiring, purchasing, selling, and servicing extensions of consumer credit as defined by Regulation B. The Bureau also seeks comment on whether this proposed coverage should be expanded or reduced or whether there are any alternative definitions the Bureau should consider in its proposed coverage of consumer credit transactions and related activities. For example, the Bureau requests comment on the "primary business" limitation in proposed § 1040.3(a)(1)(iii), including whether the term "primary business" should be defined and if so, how, or whether a different limitation should be used, such as an exclusion for referral or selection activities that are incidental to the sale of a nonfinancial good or service. In addition, the Bureau notes that a common activity performed by creditors and consumer credit servicers is furnishing information to a consumer reporting agency, an activity that is covered by the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681s–2. The Bureau therefore requests comment on whether such furnishing, by any person covered by proposed § 1040.3(a)(1), should also be separately identified as a covered product or service.

1040.3(a)(2)

The Bureau believes the proposed rule should cover brokering or extending consumer automobile leases, consistent with the definition of that activity in the Bureau's larger participant rulemaking for the automobile finance market codified at 12 CFR 1090.108. As the Bureau explained in that rulemaking, from the perspective of the consumer, many automobile leases function similarly to financing for automobile purchase transactions and have a similar impact on the consumer and his or her well-being.[456] Accordingly, proposed § 1040.3(a)(2) would extend coverage to brokering or extending consumer automobile leases in either of two circumstances identified in 12 CFR 1090.108, each of which applies only if the initial term of the lease is at least 90 days: (1) The lease is the "functional equivalent" of an automobile purchase finance arrangement and is on a "non-operating basis" within the meaning of Dodd-Frank section 1002(15)(A)(ii); or (2) the lease qualifies as a "full-payout lease and a net lease" within the meaning of the Bureau's Larger Participant rulemaking for the auto finance market, codified at 12 CFR 1001.2(a).[457] The Bureau seeks comment on the coverage of consumer automobile leasing in proposed § 1040.3(a)(2).

1040.3(a)(3)

The Bureau believes that the proposed rule should cover debt relief services, such as services that offer to renegotiate, settle, or modify the terms of a consumer's debt. Proposed § 1040.3(a)(3) would include in the coverage of proposed Part 1040 providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of consumer credit covered by proposed § 1040.3(a)(3)(i), or avoiding foreclosure. With the exception of the reference to an extension of consumer credit covered by proposed § 1040.3(a)(3)(i), these terms derive directly from the definition of this consumer financial product or service in

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[450] Regulation B comment 2(*l*)–2 states: "*Referrals to creditors.* For certain purposes, the term creditor includes such persons as real estate brokers, automobile dealers, home builders, and home-improvement contractors who do not participate in credit decisions but who only accept applications and refer applicants to creditors, or select or offer to select creditors to whom credit requests can be made."

[451] The Bureau also has proposed a more specific exemption for activities that are provided only occasionally. *See* proposed § 1040.3(b)(3) and the Section-by-Section Analysis thereto.

[452] As noted above, however, the proposed rule often would apply to merchant creditors engaged significantly in extending consumer credit with a finance charge.

[453] Transmitting or payment processing in similar circumstances also generally would not be covered by paragraphs (a)(7) and (8) of proposed § 1040.3, as discussed in the Section-by-Section Analysis of those provisions below.

[454] Of course, if the merchant regularly participates in a consumer credit decision as a creditor under Regulation B, proposed § 1040.3(a)(1)(ii) could still apply to the merchant, particularly in circumstances where no exemptions in proposed § 1040.4(b) apply to the merchant.

[455] 12 CFR 1090.106 is the Bureau's larger participant rule for the postsecondary student loan servicing market. As noted in the rule, "servicing loans" is a "consumer financial product or service" pursuant to the Dodd-Frank Act. *See* Defining Larger Participants of the Student Loan Servicing Market, 78 FR 73383, 73385 n.25 (Dec. 6, 2013) (citing 12 U.S.C. 5481(15)(A)(i) (defining "financial product or service," including "extending credit and servicing loans") and 12 U.S.C. 5481(5) (defining "consumer financial product or service").

[456] An automobile pursuant to that regulation means any self-propelled vehicle primarily used for personal, family, or household purposes for on-road transportation and does not include motor homes, recreational vehicles, golf carts, and motor scooters. 12 CFR 1090.108(a).

[457] The Bureau finalized a larger participant rule for auto financing in 2015. Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service, 80 FR 37495 (Jun. 30, 2015). That rule provides greater detail on the Bureau's approach to defining extending or brokering automobile leasing in accordance with the Bureau's authority under the Dodd-Frank Act. *Id.* The provision at 12 CFR 1001.2(a)(1) covers leases of an automobile where the lease "[q]ualifies as a full-payout lease and a net lease, as provided by 12 CFR 23.3(a), and has an initial term of not less than 90 days, as provided by 12 CFR 23.11 . . . .".

Dodd-Frank section 1002(15)(A)(viii)(II).[458] The Bureau notes that the term debt is broader than the credit the Bureau proposes to cover in proposed § 1040.3(a)(1)(i). As a result, as explained in proposed comment 3(a)(3)–1, this proposed coverage would reach debt relief services for all types of consumer debts, whether arising from secured or unsecured consumer credit transactions, or consumer debts that do not arise from credit transactions.

In its SBREFA Outline, the Bureau considered defining debt relief coverage more narrowly by reference to the definition of "debt relief services" under the FTC's Telemarketing Sales Rule, 16 CFR part 310.[459] However, in further considering this approach, the Bureau has determined that definition may be too narrow, as it does not expressly cover debt relief services for secured credit products, such as mortgages, or for debts that do not arise from credit transactions, such as tax debts, or debts in other contexts (ranging from the health to the utilities sectors) which may or may not arise from credit transactions, depending on the facts or circumstances.[460] The Bureau believes the scope of coverage in proposed § 1040.3(a)(3) would be appropriate because, as noted, debt relief services are not only focused on credit transactions. Moreover, debt relief services provided for other types of debts can affect a consumer's credit report because the person to whom the debt is owed may furnish information to a consumer reporting agency,[461] and by extension, the consumer's access to credit can be affected. The Bureau seeks comment on proposed § 1040.3(a)(3), including whether the Bureau should consider alternatives, and if so, which alternatives.

Another consumer financial product or service, which is listed in Dodd-Frank section 1002(15)(A)(viii)(I), is providing credit counseling to a consumer. Credit counseling can include counseling on consumer credit that would be covered by the proposed rule, including but not limited to credit repair services that may also be subject to the Credit Repair Organizations Act, 15 U.S.C. 1679, *et seq.* The Bureau seeks comment on whether proposed Part 1040 also should apply to credit counseling services, and if so, what types of services should be covered.

1040.3(a)(4)

The Bureau believes that the proposed rule should apply to providing consumers with consumer reports and information specific to a consumer from consumer reports, such as by providing credit scores and credit monitoring. Specifically, proposed § 1040.3(a)(4) would include in the scope of proposed part 1040 providing directly to a consumer a consumer report as defined by the FCRA, 15 U.S.C. 1681a(d), a credit score, or other information specific to a consumer from such a consumer report, except when such consumer report is provided by a user covered by 15 U.S.C. 1681m solely in connection with an adverse action as defined in 15 U.S.C. 1681a(k) with respect to a product or service not covered by any of paragraphs (a)(1) through (3) or paragraphs (a)(5) through (10) of proposed § 1040.3.[462]

The FCRA, enacted in 1970, defines which types of businesses are consumer reporting agencies. 15 U.S.C. 1681a(f). Consumer reporting agencies are the original sources of consumer reports as defined by the FCRA.[463] In general, the consumer reporting agencies provide consumer reports to "users" of these reports within the meaning of the FCRA who may in turn provide the consumer reports or information from them to consumers.[464] The consumer reporting agencies also provide consumer reports directly to consumers. The Bureau believes that defining this scope of coverage by reference to a statutorily-defined type of underlying information, a consumer report, would help providers better understand which types of products and services are covered, which would facilitate compliance with Part 1040 as proposed.[465]

Proposed § 1040.3(a)(4) therefore would apply to consumer reporting agencies when providing such products or services directly to consumers, as well as to other types of entities that deliver consumer reports or information from consumer reports directly to consumers. For example, proposed § 1040.3(a)(4) would cover not only credit monitoring services that monitor entries on a consumer's consumer credit report on an ongoing basis, but also a discrete service that transmits a consumer report as defined by the FCRA, a credit score, or other information from a consumer report directly to a consumer. Such discrete services may be provided at the consumer's request or as required by law, such as via a notice of adverse action on a consumer credit application,[466] in connection with a risk-based pricing notice generally required under Regulation V, 12 CFR 1022.72, when a consumer receives materially less favorable material terms for consumer credit based on the creditor's use of a consumer report, or in connection with transmission of results of reinvestigation of a dispute from a consumer reporting agency to a consumer pursuant to the FCRA.[467]

Proposed § 1040.3(a)(4) would not, however, cover users of consumer reports who provide those reports or information from them to consumers solely in connection with adverse action notices with respect to a product or service that is not otherwise covered by proposed § 1040.3(a). For example, a user of a consumer report providing a consumer with a copy of their credit report solely in connection with an adverse action notice taken on an application for employment would not be covered by proposed § 1040.3(a)(4).

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[458] 12 U.S.C. 5481(15)(A)(viii)(II). For examples of the types of services that fall within this proposed coverage, see the following Bureau enforcement actions: Complaint ¶ 4, CFPB v. Meracord, LLC, No. 3:13–cv–05871 (W.D. Wash. Oct. 3, 2013); Complaint ¶ 4, CFPB v. Global Client Solutions, No. 2:14-cv-06643 (C.D. Cal. Aug. 25, 2014); Complaint ¶¶ 8–14, CFPB v. Orion Processing, LLC, No. 1:15–cv–23070–MGC (S.D. Cal. Aug. 17, 2015).

[459] SBREFA Outline *supra* note 331, at 22. *See* 16 CFR 310.2(o) (covering services seeking debt relief for consumers from "unsecured creditors or debt collectors").

[460] In addition, the Bureau is concerned that incorporating a term from a regulation that applies in the telemarketing context only may create confusion, and could reduce protection for consumers obtaining debt relief services from providers not engaged in telemarketing.

[461] *See* 15 U.S.C. 1681s–2.

[462] In its SBREFA Outline (*supra* note 331, at 23), the Bureau indicated it was considering a proposal to cover credit monitoring services. The Bureau believes that it is appropriate to propose covering not only services that provide "monitoring" of consumer credit report information, but also that provide such information on a one-off basis. That is, the nature and source of the underlying information is what should define this scope of coverage, and not the frequency with which the information is provided to the consumer.

[463] 15 U.S.C. 1681a(d).

[464] 15 U.S.C. 1681m.

[465] To the extent a future Bureau regulation were to further interpret the definition of consumer report under 15 U.S.C. 1681a(d), or other terms incorporated into that definition such as a consumer reporting agency, 15 U.S.C. 1681a(f), the definition in the implementing regulation would be used, in conjunction with the statute, to define this component of coverage of this proposed rule.

[466] *See, e.g.,* 15 U.S.C. 1681j(a) (FCRA provision granting consumer right to free annual disclosure from consumer credit report file); 15 U.S.C. 1681g(a) (mandating consumer reporting agency provide information from the consumer's file to the consumer upon request); 15 U.S.C. 1681g(f) (mandating consumer reporting agency provide consumer credit score to the consumer upon request); and 15 U.S.C. 1681m(a) (FCRA provision mandating that user of consumer report to provide adverse action notice that includes credit score, among other information).

[467] *See, e.g.,* 15 U.S.C. 1681i(a)(6) (FCRA provision mandating consumer reporting agency to provide the consumer with notice of results of reinvestigation of disputed information in the consumer's credit report file).

The Bureau invites comment on proposed § 1040.3(a)(4), including whether the reference to a consumer report as defined in the FCRA is appropriate and whether the coverage of proposed § 1040.3(a)(4) should be expanded or narrowed, and, if so, how. In particular, the Bureau requests comment on whether the proposed rule also should cover products and services that provide or monitor information obtained from sources other than a consumer report under the FCRA, for example as part of a broader suite of identity theft prevention services, and if so, which such products or services should be covered and why. In addition, the Bureau requests comment on whether proposed § 1040.3(a)(4) should apply to a broader range of services undertaken by consumer reporting agencies as defined by the FCRA that may have a bearing on the ability of consumers to participate in the credit market and the manner in which they do so. Such activities could include conducting investigations of information in consumer reports that is disputed by consumers, opting consumers out of information sharing, placing a fraud alert on a consumer's credit report, or placing a security freeze on a consumer's credit report.

Finally, the Bureau requests comment on whether the use of arbitration agreements by consumer reporting agencies in the provision of the products and services described above may have an impact on the ability of consumers to pursue or participate in class actions asserting claims under FCRA against the consumers reporting agencies more generally, and if so, whether the proposed rule should mitigate those impacts, and if so, how.

1040.3(a)(5)

The Bureau believes the proposed rule should apply to deposit and share accounts. Proposed § 1040.3(a)(5) would include in the coverage of proposed Part 1040 accounts subject to the Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, and its implementing regulations, 12 CFR part 707, which applies to credit unions, and Regulation DD, 12 CFR part 1030, which applies to depository institutions.

TISA created uniform disclosure requirements for deposit and share accounts.[468] For banks, the Bureau's Regulation DD implements TISA. For credit unions, the National Credit Union Administration implements TISA in its own regulations codified at 12 CFR part 707. TISA has existed since 1991 and the Bureau believes that banks and credit unions are familiar with when TISA applies to accounts that they may offer. Accordingly, the Bureau believes that defining the accounts the Bureau proposes cover by reference to terms in TISA, and its implementing regulations, Regulation DD and 12 CFR part 707 would facilitate compliance with proposed Part 1040. The Bureau invites comment on proposed § 1040.3(a)(5), including its reference to TISA, whether the Bureau should reference other definitions of deposit or share accounts beyond those also included in proposed § 1040.3(a)(6) discussed below, and whether this portion of the proposed coverage should be expanded or narrowed, and if so, how.

1040.3(a)(6)

In addition to coverage of deposit and share accounts as defined by (or within the meaning set forth in) TISA in proposed § 1040.3(a)(5), the Bureau believes the proposed rule should cover other accounts as well as remittance transfers subject to EFTA, 15 U.S.C. 1693 *et seq.* EFTA applies, for example, to nonbank providers of accounts and to many, but not necessarily all, of the deposit and share accounts provided by depository institutions. Thus, proposed § 1040.3(a)(6) would include in the coverage for proposed part 1040 accounts and remittance transfers subject to EFTA, including its implementing regulation, Regulation E, 12 CFR part 1005. EFTA, first adopted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems and creates rules specific to consumer asset accounts and remittance transfers.[469] The Bureau implements EFTA in Regulation E. The Bureau believes that defining this coverage by reference to accounts and remittance transfers subject to EFTA as implemented by Regulation E would facilitate compliance with proposed part 1040.

The Bureau notes that it has separately proposed a rule to extend the definition of "account" to include "prepaid accounts."[470] As noted above, where this proposed rule references terms from another statute or its implementing regulations, to the extent that term is redefined or the subject of a new interpretation in the future, that new definition or interpretation would apply to the use of that term in proposed § 1040.3. Here, for example, any new definition of account that would include prepaid products would be incorporated into proposed § 1040.3(a)(6).

The Bureau notes that EFTA also regulates preauthorized electronic fund transfers (PEFTs) and store gifts cards and gift certificates. The Bureau has not proposed to include those activities as covered products or services under proposed § 1040.3(a)(6). The Bureau notes that certain gift cards and gift certificates redeemable only at a single store or affiliated group of merchants, while subject to Regulation E,[471] are payment devices that merchants use to help consumers pay for their own goods or services, which as noted above, the Bureau is not proposing to cover except in limited circumstances. In addition, PEFTs, while not described as a separate category of coverage, generally would be covered when offered as part of a covered product or service. For example, the Bureau understands that PEFTs may be offered by creditors and servicers of consumer credit under proposed § 1040.3(a)(1), providers of TISA or EFTA accounts or remittance transfers under paragraphs (a)(5) or (6) of proposed § 1040.3, funds transmitting services under proposed § 1040.3(a)(7), payment processing under proposed § 1040.3(a)(8), or debt collection under proposed § 1040.3(a)(10).

The Bureau invites comment on proposed § 1040.3(a)(6), including the reference to accounts or remittance transfers subject to EFTA, as implemented by Regulation E, and whether it should be expanded or narrowed. The Bureau also seeks comment on whether the proposed rule should cover other types of stored value products and services within the meaning of Dodd-Frank Act section 1002(15)(A)(v), and if so, what these products and services are, why they should be covered, and how they should be defined.

1040.3(a)(7)

The Bureau believes that the proposed rule should apply to transmitting or exchanging funds. Proposed § 1040.3(a)(7) would include in the coverage of proposed part 1040 transmitting or exchanging funds, except when integral to another product or service that is not covered by proposed § 1040.3. Dodd-Frank section 1002(29) defines transmitting or exchanging funds broadly to include receiving currency, monetary value, or payment instruments from a consumer for purposes of exchanging or transmitting by any means, including, among other things, wire, facsimile, electronic transfer, the Internet, or through bill payment services or business that facilitate third-party transfers.

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[468] 12 U.S.C. 4301(b).

[469] *See* 15 U.S.C. 1693(b); 12 CFR 1005.2(b) (defining "account") and 12 CFR 1005.30(e) (defining "remittance transfer").

[470] Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 79 FR 77101 (Dec. 23, 2014) (hereinafter Prepaid NPRM). The Bureau seeks comment on whether the products that would be included in Regulation E by that proposed rule should be included in proposed § 1040.3(a)(6).

[471] *See* 12 CFR 1005.20(a).

For example, a business that provides consumers with domestic money transfers generally would be covered by proposed § 1040.3(a)(7). As noted above, however, proposed § 1040.3(a)(7) would not apply to transmitting or exchanging funds where that activity is integral to a non-covered product or service. Thus, proposed § 1040.3(a)(7) generally would not apply, for example, to a real estate settlement agent, an attorney, or a trust company or other custodian transmitting funds from an escrow or trust account that are an integral part of real estate settlement services or legal services. By contrast, a merchant who offers a domestic money transfer service as a stand-alone product to consumers would be covered by proposed § 1040.3(a)(7). In addition, the Bureau believes that mobile wireless third-party billing services that engage in transmitting funds would be covered by proposed § 1040.3(a)(7), as the Bureau understands that such services would not typically be integral to the provision of wireless telecommunications services.

The Bureau seeks comment on proposed § 1040.3(a)(7), including whether the Bureau should consider alternatives in defining these terms, and if so, particular definitions or changes the Bureau should consider and why. For example, the Bureau seeks comment on whether the Bureau should define the limitation on this coverage by reference to funds transmitting or exchanging that is necessary or essential to a non-covered product or service, rather than by reference to such activities that are integral to the non-covered product or service.

1040.3(a)(8)

The Bureau believes that the proposed rule should cover certain types of payment and financial data processing. Proposed § 1040.3(a)(8) therefore would include in the coverage of proposed Part 1040 any product or service in which the provider or the provider's product or service accepts financial or banking data directly from a consumer for the purpose of initiating a payment by a consumer via a payment instrument as defined 15 U.S.C. 5481(18)[472] or initiating a credit card or charge card transaction for a consumer, except when the person accepting the data or providing the product or service accepting the data is selling or marketing the nonfinancial good or service for which the payment, credit card, or charge card transaction is being made. Proposed comment 3(a)(8)–1 would clarify that the definitions of the terms credit card and charge card in Regulation Z, 12 CFR 1026.2(a)(15), apply to the use of these terms in proposed § 1040.3(a)(8).

The coverage of proposed § 1040.3(a)(8) would not include all types of payment and financial data processing, but rather only those types that involve accepting financial or banking data directly from the consumer for initiating a payment, credit card, or charge card transaction. An entity would be covered, for example, by providing the consumer with a mobile phone application (or app, for short) that accepts this data from the consumer and transmits it to a merchant, a creditor, or others. An entity also would be covered by itself accepting the data from the consumer at a storefront or kiosk, by electronic means on the Internet or by email, or by telephone. For example, a wireless, wireline, or cable provider that allows consumers to initiate payments to third parties through its billing platform would be covered by proposed § 1040.3(a)(8).

The Bureau notes that the breadth of proposed § 1040.3(a)(8) would be limited in several ways. First, the coverage of proposed § 1040.3(a)(8) would not include merchants, retailers, or sellers of nonfinancial goods or services when they are providing payment processing services directly and exclusively for purpose of initiating payments instructions by the consumer to pay such persons for the purchase of, or to complete a commercial transaction for, such nonfinancial goods or services. Those types of payment processing services are excluded from the type of financial product or service identified in Dodd-Frank section 1002(15)(A)(vii)(I). As a result, they would not be a consumer financial product or service pursuant to 12 U.S.C. 5481(5), which is a statutory limitation on the coverage of proposed § 1040.3(a). For the sake of clarity, proposed § 1040.3(a)(8) would state that it would not apply to accepting instructions directly from a consumer to pay for a nonfinancial good or service sold by the person who is accepting the instructions. In addition, proposed § 1040.3(a)(8) would not apply to accepting instructions directly from a consumer to pay for a nonfinancial good or service marketed by the person who is accepting the instructions. As a result of this proposed exception, proposed § 1040.3(a)(8) would not reach, for example, a sales agent, such as a travel agent, who accepts an instruction from a consumer to pay for a nonfinancial good or service that is marketed by the agent on behalf of a third party that provides the nonfinancial good or service.

The Bureau further notes that certain forms of payment processing also would be covered by other provisions of proposed § 1040.3(a). For example, proposed § 1040.3(a)(1)(v) (servicing of consumer credit), § 1040.3(a)(3) (debt relief services), § 1040.3(a)(5) (deposit and share accounts), § 1040.3(a)(6) (consumer asset accounts and remittance transfers), § 1040.3(a)(7) (transmitting or exchanging funds), or § 1040.3(a)(10) (debt collection) could involve certain forms of payment processing, whether or not those forms also would be covered by proposed § 1040.3(a)(8).

The Bureau seeks comment on proposed § 1040.3(a)(8), including on whether it should adopt a broader, narrower, or different definition of covered payment and financial data processing and, if so, why and how it should do so. For example, the Bureau seeks comment on whether proposed § 1040.3(a)(8) should include an exclusion like the exclusion in proposed § 1040.3(a)(7) for products or services that are integral to another product or service not covered by proposed § 1040.3, and if so, what examples of such products or services should be excluded and why.

1040.3(a)(9)

The Bureau believes that the proposed rule should apply to cashing checks for consumers as well as to associated consumer check collection and consumer check guaranty services. Proposed § 1040.3(a)(9) would include in the coverage of proposed Part 1040 check cashing, check collection, or check guaranty services, which are types of consumer financial product or service identified in Dodd-Frank section 1002(15)(A)(vi). The Bureau seeks comment on proposed § 1040.3(a)(9), including on whether the Bureau should consider alternatives in defining this scope of coverage, and if so, particular definitions or changes the Bureau should consider and why.

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[472] Dodd-Frank section 1002(18) defines a "payment instrument" as "a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency)."

1040.3(a)(10)

The Bureau believes that the proposed rule should apply to debt collection activities arising from products covered by paragraphs (a)(1) through (9) of proposed § 1040.3. Dodd-Frank section 1002(15)(A)(x) identifies debt collection as a type of consumer financial product or service that is separate from, but related to, other types of consumer financial products or services. In the proposed rule, the Bureau is similarly proposing to include a separate provision specifying the coverage of activities relating to debt collection in proposed § 1040.3(a)(10). In addition to collections on consumer credit as defined under ECOA, other products and services covered by proposed § 1040.3(a) may lead to collections; if any of these collection activities were not separately covered, collectors in these cases could seek to invoke arbitration agreements. Yet the Study showed that FDCPA class actions were the most common type of class actions filed across six significant markets and that debt collection class settlements were by far the most common type of class action settlement in all of consumer finance,[473] which in turn suggests that debt collection is an activity in which it is especially important to allow for private enforcement, including class actions, to guarantee the consumer protections afforded by the FDCPA, among other applicable laws. Moreover, particularly in light of the fact that collectors often bring suit against consumers and the history discussed above in Part II of numerous claims being filed by debt collectors against consumers in an arbitral forum where there were serious fairness concerns, the Bureau believes that application of the proposed rule to collection activities may be one of the most important components of the rule.

Specifically, proposed § 1040.3(a)(10) would apply the requirements of proposed Part 1040 to collecting debt that arises from any of the consumer financial products or services covered by any of paragraphs (a)(1) through (9) of proposed § 1040.3. For clarity, proposed § 1040.3(a)(10) would identify the specific types of entities that the Bureau understands typically are engaged in collecting these debts: (1) A person offering or providing the product or service giving rise to the debt being collected, an affiliate of such person, or a person acting on behalf of such person or affiliate; (2) a purchaser or acquirer of an extension of consumer credit covered by proposed § 1040.3(a)(1)(i), an affiliate of such person, or a person acting on behalf of such person or affiliate; and (3) a debt collector as defined by the FDCPA, 15 U.S.C. 1692a(6). The coverage of each of these types of entities engaged in debt collection is discussed separately below.

1040.3(a)(10)(i) and (ii)

Proposed § 1040.3(a)(10)(i) would apply to collection by a person offering or providing the covered product or service giving rise to the debt being collected, an affiliate of such person,[474] or a person acting on behalf of such person or affiliate. This coverage would include, for example, collection by a creditor extending consumer credit. The Bureau notes, however, that as with proposed § 1040.3(a)(1) discussed above, proposed § 1040.3(a)(10)(i) would not extend coverage to collection directly by a merchant of debt arising from credit it extends for the purchase of its nonfinancial goods or services in circumstances where the merchant is exempt under proposed § 1040.3(b). Similarly, collection directly by governments or government affiliates on credit they extend would be exempt in the circumstances described in proposed § 1040.3(b).

In addition, proposed § 1040.3(a)(10)(ii) would cover collection activities by an acquirer or purchaser of an extension of consumer credit covered by proposed § 1040.3(a)(1), an affiliate of such person, or a person acting on behalf of such person or affiliate. This coverage would reach such persons even when proposed § 1040.3(b) would exclude the original creditor from coverage. For example, such collection activities by acquirers or purchasers would be covered even when the original creditor, such as a government or merchant, would be excluded from coverage in circumstances described in proposed § 1040.3(b). As a result, collection by an acquirer or purchaser of an extension of merchant consumer credit covered by Regulation B, such as medical credit, would be covered by proposed § 1040.3(a)(10)(ii), even in circumstances where proposed § 1040.3(b)(5) would exclude the medical creditor from coverage.[475] In other words, although hospitals, doctors, and other service providers extending incidental ECOA consumer credit would not be subject to the requirements of § 1040.4 to the extent proposed § 1040.3(b)(5) would exclude them from coverage because the Bureau lacks authority over them under Dodd-Frank section 1027 or they would be excluded under another provision of proposed § 1040.3(b), an acquirer or purchaser of such consumer credit generally would be subject to proposed § 1040.4.[476]

The Bureau believes that many activities involved in collection of debts arising from extensions of consumer credit would also constitute servicing under proposed § 1040.3(a)(1)(v). However, the Bureau is proposing the coverage of collection activities by any other person acting on behalf of the provider or affiliate in § 1040.3(a)(10)(i) and (ii) to confirm that collection activity by a such other persons would be covered even when such other persons do not meet the definition of a debt collector under the FDCPA (*see* proposed § 1040.3(a)(10)(iii) discussed below) because they are not collecting on an account obtained in default.[477] By proposing coverage of debt collection by such other persons, the Bureau also seeks to confirm that collection activity would be covered even in contexts in which industry may sometimes differentiate between the terms servicing and debt collection. For example, in some contexts "servicing" may be used in the industry to refer to activities involving seeking and processing payments on a debt from a consumer who is not in default, while "collections" may sometimes be used by industry to refer to post-default activities.[478] Both types of collection activity would be covered under the proposed rule.

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[473] Study, *supra* note 2, section 6 at 19 and section 8 at 12.

[474] As proposed comment 3(a)(10)–2 would clarify, Dodd-Frank section 1002(1) defines the term affiliate as "any person that controls, is controlled by, or is under common control with another person." 12 U.S.C. 5481(1).

[475] ECOA credit includes incidental credit pursuant to Regulation B and the commentary specifically notes that hospitals and doctors can provide such incidental credit. *See* 12 CFR 1002.3(c), comment 1 ("If a service provider (such as a hospital, doctor, lawyer, or merchant) allows the client or customer to defer the payment of a bill, this deferral of debt is credit for purposes of the regulation, even though there is no finance charge and no agreement for payment in installments.").

[476] The Bureau also explained in its Debt Collection Larger Participant Rulemaking, in analyzing what type of transactions are "credit" under the Dodd-Frank Act, that "[i]n some situations, a medical provider may grant the right to defer payment after the medical service is rendered. In those circumstances, the transaction might involve an extension of credit." Defining Larger Participants of the Consumer Debt Collection Market, 77 FR 65775, 65779 (Oct. 31, 2012). Other regulatory guidance in the past has indicated that "a health care provider is a creditor [under ECOA] if it regularly bills patients after the completion of services, including for the remainder of medical fees not reimbursed by insurance. Similarly, health care providers who regularly allow patients to set up payment plans after services have been rendered are creditors." *See* Steven Toporoff, *The "Red Flags" Rule: What Health Care Providers Need to Know,* Modern Medicine Network (Jan. 11, 2010) (commentary by attorney at FTC), *available at http://www.modernmedicine.com/modern-medicine/news/modernmedicine/modern-medicine-feature-articles/red-flags-rule-what-healthcare-* (last visited May 1, 2016). The Bureau is not interpreting ECOA or Regulation B here.

[477] *See* 15 U.S.C. 1692a(6)(F)(iii) (defining a debt collector to exclude a person collecting on an account "not in default at the time it was obtained").

1040.3(a)(10)(iii)

As discussed above, some debt collection activities are carried out by persons hired by the owner of a debt to collect the debt. The FDCPA generally considers such persons to be debt collectors subject to its statutory requirements and prohibitions designed to deter abusive practices. Allegations of violation of the FDCPA by debt collectors also were among the most common type of consumer claim identified in the Study, whether in class actions, individual arbitration, or individual litigation. Proposed § 1040.3(a)(10)(iii) therefore would include in the coverage of proposed part 1040 collecting debt by a debt collector as defined by the FDCPA, 15 U.S.C. 1692a(6),[479] when the debt arises from any consumer financial products and services described in proposed § 1040.3(a)(1) through (9).

As discussed above, the Bureau believes it is important to cover collection on all of the consumer financial products and services covered by the rule, since all of these products can generate fees that, if not paid, that lead to collection activities by debt collectors as defined in the FDCPA. Of course, one of the most common types of debt collected by FDCPA debt collectors arises from consumer credit transactions. Accordingly, proposed § 1040.3(a)(10)(iii) would extend coverage, for example, to collection by a third-party FDCPA debt collector acting on behalf of the persons extending credit who are ECOA creditors and thus subject to proposed § 1040.3(a)(1)(i) or their successors and assigns who are subject to proposed § 1040.3(a)(1)(iv). The Bureau believes that proposed § 1040.3(a)(10)'s references to these existing regulatory regimes would facilitate compliance, since the Bureau expects that industry has substantial experience with existing contours of coverage under the FDCPA and ECOA. As discussed above, proposed § 1040.3(a)(10)(iv) would apply proposed Part 1040 to purchasers of consumer credit extended by persons over whom the Bureau lacks authority under Dodd-Frank section 1027 or 1029 or who are otherwise exempt under proposed § 1040.3(b). Similarly, proposed § 1040.3(a)(10)(iii) would apply to FDCPA debt collectors when collecting on this type of credit as well as other debts arising from products or services covered by proposed § 1040.3(a)(1) through (9) provided by persons over whom the Bureau lacks authority under Dodd-Frank section 1027 or 1029 or who are otherwise exempt under proposed § 1040.3(b) .

The Bureau recognizes that FDCPA debt collectors do not typically become party to agreements with consumers for the provision of debt collection services; they instead collect on debt incurred pursuant to contracts between consumers and creditors or other providers. There are, however, a number of ways in which the proposed rule would regulate or otherwise affect the conduct of debt collectors. First, to the extent that the debt collector is collecting on a debt arising from an extension of consumer credit covered by proposed § 1040.3(a)(1), any pre-dispute arbitration agreement for that product or service that is entered into after the date set forth in proposed § 1040.5(a) already would be required under proposed § 1040.4(a)(2) to contain a provision that expressly prohibits anyone, including the debt collector, from invoking it in response to a class action. Second, independent of the above-described contractual restriction, under proposed § 1040.4(a)(1), discussed below, the debt collector would be prohibited from invoking a pre-dispute arbitration agreement in a class action dispute concerning such collection activities. If a pre-dispute arbitration agreement is the basis for an individual arbitration filed by or against the debt collector related to its collection activities that are covered by the proposal, then the debt collector also would be required to submit to the Bureau the records specified in proposed § 1040.4(b). Finally, to the extent that a collector becomes party to a contract with individual consumers in the course of settling debts, such as a payment plan agreement, and that contract includes a pre-dispute arbitration agreement, then proposed § 1040.4(a)(2) would require the collector to include the prescribed language in that pre-dispute arbitration agreement.[480]

Proposed comment 3(a)(10)–1 would further clarify that collecting debt by persons listed in § 1040.3(a)(1) would be covered with respect to the consumer financial products or services identified in those provisions, but not for other types of credit or debt they may collect, such as business credit.

The Bureau seeks comment on its proposed debt collection coverage. For example, the Bureau requests comment on whether furnishing information to a consumer reporting agency covered by the FCRA, 15 U.S.C. 1681s–2, by any person covered by proposed § 1040.3(a)(10) should also be separately identified as a covered product or service. The Bureau also seeks comment on whether there are any persons who neither provide a product or service covered by any of paragraphs (a)(1) through (9) of proposed § 1040.3 nor are an FDCPA debt collector nonetheless engage in debt collection on such products or services, and if so, whether proposed § 1040.3(a)(10) should be expanded to cover such persons, and if so, why and how. Similarly, the Bureau requests comment on whether debt collectors as defined in the FDCPA would include anyone not already covered by § 1040.3(a)(1)(i) and (ii), and if not, whether the proposed rule should simply clarify that debt collectors as defined in the FDCPA are covered under proposed § 1040.3(a)(1)(i) and (ii), as applicable, rather than separately stating their coverage under proposed § 1040.3(a)(10)(iii).

1040.3(b) Exclusions From Coverage

Proposed § 1040.3(b) would identify the set of conditions under which certain persons would be excluded from the coverage of proposed part 1040 when providing a specified product or service covered by proposed § 1040.3(a).

The Bureau further notes that certain additional limitations are inherent in proposed § 1040.3(a). These limitations arise not only from the terms chosen for proposed § 1040.3(a) in general, but also from the fact that in a number of places proposed § 1040.3(a) references terms from other enumerated consumer financial protection statutes and their implementing regulations. For example, a transaction is "credit" as defined by Regulation B implementing ECOA only if there is a "right" to defer payment.[481] These limitations would be incorporated into the coverage of proposed part 1040, regardless of whether they are explicitly mentioned in the text of the regulation or the commentary of the proposed rule.

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[478] *See* FTC, *The Structure and Practices of the Debt Buying Industry*, at n.57 (2013) ("Creditors consider consumers who are late in paying as being 'delinquent' on their debts. Creditors may continue to collect on delinquent debts, but after a period of time creditors consider consumers to be in 'default' on their debts.").

[479] To the extent a future Bureau regulation were to implement the definition of debt collector under 15 U.S.C. 1692a(6), the definition in the implementing regulation would be used, in conjunction with the statute, to define this component of coverage of this proposed rule.

[480] *See* proposed comment 4–1.

[481] *See* Regulation B comment 2(*j*)–1 ("Under Regulation B, a transaction is credit if there is a right to defer payment of a debt . . . .").

As discussed above, if an exclusion in proposed § 1040.3(b) does not apply to a person that offers or provides a product or service described in proposed § 1040.3(a), that person would meet the definition of a provider in proposed § 1040.2(c) and would be subject to the proposed rule. Even if an exclusion in proposed § 1040.3(b) applies person offering or providing a product or service, however, that person may still be covered by part 1040 when providing a different product or service described in proposed § 1040.3(a) if an exemption in proposed § 1040.3(b) does not apply to that product or service.

For illustrative purposes, the Bureau notes that persons offering or providing consumer financial products or services covered by proposed § 1040.3(a) described above may include, without limitation, banks, credit unions, credit card issuers, certain automobile lenders, auto title lenders, small-dollar or payday lenders, private student lenders, payment advance companies, other installment and open-end lenders, loan originators and other entities that arrange for consumer loans, providers of certain automobile leases, loan servicers, debt settlement firms, foreclosure rescue firms, certain credit service/repair organizations, providers of consumer credit reports and credit scores, credit monitoring service providers, debt collectors, debt buyers, check cashing providers, remittance transfer providers, domestic money transfer or currency exchange service providers, and certain payment processors.[482]

The Bureau requests comment on the exclusions proposed in § 1040.4(b), and also on whether the proposed rule should include other exclusions. For example, as discussed below in the Section-by-Section Analysis to proposed § 1040.4(b), the Bureau requests comment on whether the proposed rule should include an exclusion for certain small entities. In addition, the Bureau requests comment on how the proposed rule should interact with potential regulations, discussed above, that may be promulgated by the U.S. Department of Education. The Bureau notes, for example, that such a regulation, if adopted, could overlap with the Bureau's proposed rule here, which would apply to postsecondary education institutions that are significantly engaged in provide financing directly to consumers with a finance charge.[483]

1040.3(b)(1)

Proposed § 1040.3(b)(1) would exclude from the coverage of proposed part 1040 broker-dealers to the extent they are providing any products and services covered by proposed § 1040.3(a) that are also subject to specified rules promulgated or authorized by the SEC prohibiting the use of pre-dispute arbitration agreements in class litigation and providing for making arbitral awards public. The term broker-dealer generally refers to persons engaged in the business of effecting securities transactions for the account of others or buying and selling securities for their own account.[484] Broker-dealers may provide products that are described in proposed § 1040(a). For example, broker-dealers may extend credit to allow customers to purchase securities. Securities credit is subject to ECOA as recognized in Regulation B, 12 CFR 1002.3(b). The Bureau proposes to exclude such persons from coverage to the extent providing products and services described in proposed § 1040.3(a) because they are already covered by existing regulations that limit the application of pre-dispute arbitration agreements to class litigation and provide for making arbitral awards public.

As discussed above, since 1992, FINRA, a self-regulatory organization overseen by the SEC, has required pre-dispute arbitration agreements adopted by broker-dealers to include language disclaiming the application of the arbitration agreement to class actions filed in court.[485] The SEC, which must authorize FINRA rules, authorized the original version of this rule in 1992.[486] The Bureau also notes that claims in FINRA arbitration between customers and broker-dealers are filed with FINRA,[487] which is overseen by the SEC, and all awards between customers and broker-dealers under FINRA rules must be made public.[488] Proposed comment 3(b)(1)–1 would clarify that § 1040.3(b)(1)'s reference to rules authorized by the SEC would include those promulgated by FINRA and approved by the SEC, as described above, in order that products and services covered by those FINRA rules would be excluded from the coverage of proposed part 1040.

The Bureau invites comment on proposed § 1040.3(b)(1) and comment 3(b)(1)–1, including whether such an exclusion from proposed part 1040 is appropriate and whether it should be expanded or narrowed, and if so, how. In particular, the Bureau seeks comment on the extent to which any other person who is acting in an SEC-regulated capacity, such as an investment adviser, may also be providing a consumer financial product or service that would be subject to proposed § 1040.3.[489] For example, the Bureau seeks comment on whether the proposed rule should include an exclusion for such persons to the extent they are subject to any SEC rule (which does not currently exist, but which the SEC could adopt in the future, for example, under Dodd-Frank section 921) that is functionally equivalent to the proposed rule.

The CFTC has a regulation requiring that pre-dispute arbitration agreements in customer agreements for products and services regulated by the CFTC be voluntary, such that the customer receives a specified disclosure before being asked to sign the pre-dispute arbitration agreement, is not required to sign the pre-dispute arbitration agreement as a condition of receiving the product or service, and is only subject to the pre-dispute arbitration agreement if he or she separately signs it, among other requirements.[490] The Bureau has considered whether to propose excluding from coverage any consumer financial products and services covered by proposed § 1040.3(a) that are subject to the CFTC regulation.[491] That regulation, however, does not ensure consumers have access to private remedies in class actions and does not provide for transparency of arbitral awards. The Bureau believes that this proposed rule can provide important consumer protections for providers that might also be subject to the CFTC's regulation. The Bureau also believes that complying with both rules would not be unduly burdensome for any affected providers, given the limited nature of the CFTC rule. The Bureau therefore is not proposing an exemption for those persons.

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[482] The Bureau discusses the examples as well as other types of entities that may be covered in certain circumstances above in the Section-by-Section Analysis to proposed § 1040.3. In addition, as part of its broader administration of the enumerated consumer financial protection statutes and Title X of the Dodd-Frank Act, the Bureau continues to analyze the nature of products or services tied to virtual currencies.

[483] *See* Press Release, U.S. Dept. of Ed., *U.S. Department of Education Takes Further Steps to Protect Students from Predatory Higher Education Institutions* (Mar. 11, 2016) (describing negotiated rulemaking agenda for 2015–16 as including a potential regulation addressing mandatory arbitration agreements used by higher education institutions), *available at http://www.ed.gov/news/press-releases/us-department-education-takes-further-steps-protect-students-predatory-higher-education-institutions* (last visited May 1, 2016).

[484] *See* 15 U.S.C. 78c(4)–(5) (defining the terms broker and dealer under the Securities Exchange Act).

[485] FINRA Rule 2268(f). FINRA, formerly the National Association of Securities Dealers, also serves as an arbitral administrator for disputes concerning broker-dealers and its rules further prohibit broker-dealers from enforcing an arbitration agreement against a member of a certified or putative class case. FINRA Rule 12204(d).

[486] SEC approving release for amendments to NASD Code of Arbitration Procedure and Rules of Fair Practice, Exchange Act Rel. No. 31371, 1992 WL 324491 (Oct. 28, 1992).

[487] FINRA Rule 12302(a) (providing that claimant must file an initial claim with the Director of the FINRA Office of Dispute Resolution).

[488] FINRA Rule 12904(h) ("All awards shall be made publicly available.").

[489] *See* Dodd-Frank section 1002(21) (defining person regulated by the SEC). *See also* Dodd-Frank section 1027(i)(1) (providing that Dodd-Frank Act Title X provisions may not be construed as altering, amending, or affecting the authority of the SEC and that the Bureau has no authority to enforce Title X with respect to a person regulated by the SEC).

Under the proposed rule, any product or service that is subject to both the Bureau's proposed rule and the CFTC rule [492] would therefore need to meet the requirements of both rules. For example, any pre-dispute arbitration agreement would need to be both satisfy the CFTC requirements to ensure the contract is voluntary and contain the provision mandated by proposed § 1040.4(a)(2).[493] The Bureau seeks comment on which types of products and services might be subject to both its proposed rule and the existing CFTC rule, on the incidence of potentially-classable disputes over these products or services, on the compatibility of its proposed rule with the existing CFTC rule, and on whether the Bureau should exempt consumer financial products and services that are subject to the CFTC rule or more broadly activities that are subject to the jurisdiction of the CFTC under the Commodity Exchange Act.[494]

1040.3(b)(2)

Proposed § 1040.3(b)(2) would exclude from the coverage of proposed Part 1040 governments and their affiliates, as defined by 12 U.S.C. 5481(1), to the extent providing products and services directly to consumers in circumstances specified in proposed § 1040.3(b)(2)(i) or (ii). This proposed exclusion would not apply to an entity that is neither a government nor an affiliate of a government but provides services to a government or an affiliate of a government.[495]

The Bureau believes that private enforcement of consumer protection laws, when provided for by statute, is an important companion to regulation, supervision over, and enforcement against private providers by governments at the local, State, and Federal levels. The Bureau believes, however, that financial products and services provided by governments and their affiliates directly to consumers who reside within territorial jurisdiction of the governments should generally not be covered by proposed part 1040 given the unique position that governments are in with respect to products and services the governments and their affiliates themselves provide directly to their own constituents.

Specifically, proposed § 1040.3(b)(2)(i) would exclude from coverage any products and services covered by proposed § 1040.3(a) when provided directly by the Federal government and its affiliates. In circumstances where proposed § 1040.3(b)(2)(i) would apply, the Bureau believes that the Federal government and its affiliates are uniquely accountable through the democratic process to consumers to whom the Federal government and its affiliates directly provide products and services. The Bureau additionally believes that the democratic process may compel the Federal government and its affiliates to treat consumers fairly with respect to dispute resolution over the products and services they provide directly to consumers. For these reasons, the Bureau proposes to exempt from coverage of part 1040 products and services provided directly by the Federal governmental and its affiliates to consumers. By limiting this exemption to products and services provided directly by the Federal government and its affiliates, proposed § 1040.3(b)(2)(i) would not exempt nongovernmental entities that provide covered products or services on behalf of the Federal government or its affiliates, such as a student loan servicer. Proposed comment 3(b)(2)–1 would reiterate this point, with respect to the exclusions in proposed § 1040.3(b)(2), and also would note that the definition of affiliate in Dodd-Frank section 1002(1) would apply to the use of the term in proposed § 1040.3(b)(2).

Proposed § 1040.3(b)(2)(ii) would exclude from coverage any State, local, or tribal government, and any affiliate of a State, local, or tribal government, to the extent it is providing consumer financial products and services covered by § 1040.3(a) directly to consumers who reside in the government's territorial jurisdiction. The Bureau believes that such governments and their affiliates are persons pursuant to Dodd-Frank section 1002(19) and that a number of such governments and their affiliates may provide financial products and services that could otherwise be covered by proposed § 1040.3(a). In circumstances where proposed § 1040.3(b)(2)(ii) would apply, the Bureau believes that governments and their affiliates are uniquely accountable through the democratic process to consumers for products and services the governments and their affiliates provide directly to consumers who reside within their territorial jurisdiction. The Bureau additionally believes that the democratic process may compel governments and their affiliates to treat consumers who reside within the government's territorial jurisdictions fairly with respect to dispute resolution over the products and services the governments and affiliates provide directly to those consumers. For these reasons, the Bureau proposes to exempt from coverage of part 1040 products and services provided directly by governments and their affiliates to consumers who reside within the territorial jurisdiction of these governments.

By limiting this exclusion to services provided "directly" by these governments and their affiliates, the proposal would make clear that proposed § 1040.3(b)(2)(ii) would not exclude from the coverage of part 1040 nongovernmental entities that provide covered products or services on behalf of State, local, or tribal governments or their affiliates, such as a bank that issues a payroll card account for State, local, or tribal government employees or a private debt collector that collects on consumer credit extended by a State, local, or tribal government. This proposed exemption also would not extend to State, local, or tribal governments or their affiliates providing products or services to consumers who reside outside the territorial jurisdiction of the government. The Bureau believes that the democratic process and its accountability mechanisms are not generally as strong in protecting consumers who do not reside in the territory of the government that is itself, or via a government affiliate, providing products or services directly to them. For example, because such consumers do not reside in the government's territorial jurisdiction, they are not likely to be eligible to vote in elections to select representatives in that government or on ballot initiatives or other matters that would bind that government or its affiliates.[496]

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[490] 17 CFR 166.5.

[491] *See* SBREFA Outline *supra* note 331, at 23.

[492] The Bureau understands that foreign currency spot transactions are not covered by the CFTC rule. *See* 17 CFR 166.5(a)(ii) (applying CFTC rule to "retail fore[ign]ex[change]"); *but see* 7 U.S.C. 2(c)(2)(B)(i)(I) (Commodity Exchange Act covering retail foreign exchange contracts that provide for "future delivery") & CFTC and SEC, Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule, 77 FR 48208, 48256 (Aug. 13, 2012) ("The CEA generally does not confer regulatory jurisdiction on the CFTC with respect to spot transactions.").

[493] If a provider offers products or services that are covered by the proposed rule, such as consumer credit, and others that are not, the provider would be permitted to use contract language that is tailored to this circumstance. *See* proposed § 1040.4(a)(2)(ii).

[494] *See* Dodd-Frank section 1002(20) (defining "person regulated by the [CFTC]" as "any person that is registered, or required by statute or regulation to be registered, with the [CFTC], but only to the extent that the activities of such person are subject to the jurisdiction of the [CFTC] under the Commodity Exchange Act."); *see also Dodd-Frank* section 1027(j)(1) (providing that the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the CFTC).

[495] Dodd-Frank section 1002(1) defines the term affiliate as "any person that controls, is controlled by, or is under common control with another person." 12 U.S.C. 5481(1).

Accordingly, proposed comment 1040.3(b)(2)-2 would provide examples of consumer financial products and services that are offered or provided by State, local, or tribal governments or their affiliates directly to consumers who reside in the government's territorial jurisdiction. These would include the following: (1) A bank that is an affiliate of a State government providing a student loan or deposit account directly to a resident of the State; and (2) a utility that is an affiliate of a State or municipal government providing credit or payment processing services directly to a consumer who resides in the State or municipality to allow a consumer to purchase energy from an energy supplier that is not an affiliate of the same State or municipal government. Proposed comment 3(b)(2)-2 would provide examples of consumer financial products and services that are offered or provided by State, local, or tribal governments or their affiliates directly to consumers who do not reside in the government's territorial jurisdiction. These would include the following: (1) A bank that is an affiliate of a State government providing a student loan to a student who resides in another State; and (2) a tribal government affiliate providing a short-term loan to a consumer who does not reside in the tribal government's territorial jurisdiction and completes the transaction via Internet. These examples are illustrative, and non-exhaustive. The use of the term "affiliated" in these examples also indicates that this exemption would not apply to services provided by persons who are not affiliates of governments. For example, so-called "public utilities" would not be exempt unless they control, are controlled by, or are under common control with a government or its affiliates. The Bureau requests comment on these proposed examples, and on whether other examples should be included.

The Bureau further notes that the proposed rule would not cover any government utility, or other affiliates of governments such as schools, when eligible for other exemptions in proposed § 1040.3(b). For example, a government would be exempt when providing consumer credit for its own services if the government does this below the frequency specified in proposed § 1040.3(b)(3), or if the credit does not include a finance charge, in which case the exemption in proposed § 1040.3(b)(5) may apply.

The Bureau seeks comment on the exclusions in proposed § 1040.3(b)(2), including on the use of the terms "government," "affiliate," "resides," and "territorial jurisdiction" in proposed § 1040.3(b)(2)(i) and (ii), and, if clarifications are needed in general or for specific types of governments or governmental affiliates, what those should be. The Bureau specifically solicits comment on the exclusions in proposed § 1040.3(b)(2) from tribal governments under its Policy for Consultation with Tribal Governments.[497] The Bureau also requests comment on whether a government affiliate created by a government but which does not qualify as an "arm" of the government should be covered by this proposed exemption.[498] In particular, the Bureau requests comment on whether the proposed exemption should be narrowed so that it does not apply to a government affiliate that is not an "arm" of the government. Finally, the Bureau requests comment on whether the governments or government affiliates described in proposed § 1040.3(b)(2) should be excluded from coverage entirely, and on whether the exclusions as proposed should be expanded to cover additional actors or narrowed to cover only certain consumer financial products and services, and if so, which products and services.

1040.3(b)(3)

The Bureau proposes in § 1040.3(b)(3) an exemption for a person in relation to any product or service listed in a paragraph under proposed § 1040.3(a) that the person and any affiliates collectively offer or provide to no more than 25 consumers in the current calendar year and that it and any affiliates have not provided to more than 25 consumers in the preceding calendar year.[499] For example, a person who, together with its affiliates, provides a covered product or service to 26 or more consumers in the current calendar year or in the previous calendar year would not be eligible for this proposed exemption and generally would be required to comply with all applicable provisions of the proposed rule starting with the 26th consumer to whom the product or service is offered or provided in the calendar year.

The Bureau believes that a threshold of the type described above (based upon provision of a product or service to only 25 or fewer persons annually) may be appropriate to exclude covered products and services from coverage when they are not offered or provided on a regular basis for several reasons. First, the Bureau believes that services and products offered or provided to only 25 or fewer consumers per year are unlikely to cause harms that are eligible for redress in class actions under the "numerosity" requirement of Federal Rule 23 governing class actions or State analogues, as discussed above in Part II. Second, when covered products or services are offered or provided so infrequently, the likelihood of an individual claim in arbitration also is especially low. Therefore, the Bureau believes that applying the proposed rule to persons who engage in so little activity involving a covered product or service is unlikely to have a significant impact on consumers. Third, the Bureau believes that excluding covered products and services that entities offer or provide so infrequently would relieve these entities of the burden of complying with the proposed rule for those products and services.

The Bureau is aware that some of the terms in statutes or their implementing regulations referenced in proposed § 1040.3(a) have their own exclusions for persons who do not regularly engage in covered activity. Except for the definition of remittance transfer in Regulation E subpart B, which is incorporated into proposed § 1040.3(a)(6),[500] the terms referenced do not specify a particular numeric threshold.[501]

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[496] In its SBREFA Outline (*supra* note 331, at 23), the Bureau indicated it was considering a proposal to exempt governments providing certain services to consumers outside their jurisdiction. As noted here, the Bureau is concerned that democratic accountability is not sufficient to ensure consumer protections in those circumstances, and therefore is not proposing such an exemption.

[497] Bureau of Consumer Fin. Prot., *Policy for Consultation with Tribal Governments,* (Apr. 22, 2013), *available* at *http://files.consumerfinance.gov/f/201304_cfpb_consultations.pdf.*

[498] *See, e.g., Pele* v. *Pennsylvania Higher Educ. Assistance Authority,* 628 Fed. Appx. 870, 873 (4th Cir. 2015) (holding that student loan servicing agency created by the state of Pennsylvania was not an arm of the state and thus was not exempt from the coverage of the Fair Credit Reporting Act) (petition for *certiorari pending*).

[499] As proposed comment 3(b)(3)–1 would make clarify, Dodd-Frank section 1002(1) defines the term affiliate as "any person that controls, is controlled by, or is under common control with another person." 12 U.S.C. 5481(1).

For purposes of this rule, the Bureau believes that a single uniform numerical threshold may facilitate compliance and reduce complexity, particularly given that application of the proposed rule would not just affect consumers' ability to bring class claims under specific Federal consumer financial laws, but also other types of State and Federal law claims. The proposed 25-consumer threshold also would be generally consistent with the threshold for "regularly extend[ing] consumer credit" under 12 CFR 1026.2(a)(17)(v), which applies certain TILA disclosure requirements to persons making more than 25 non-mortgage credit transactions in a year. The Bureau emphasizes that it is proposing this uniform standard in the unique context of this proposed rule, and that it expects to continue to interpret thresholds under the enumerated consumer financial protection statutes and their implementing regulations according to their specific language, contexts, and purposes. The Bureau further notes that basing an exemption on the level of activity in the current and preceding calendar year is consistent with the threshold under 12 CFR 1026.2(a)(17)(v).

The Bureau seeks comment on this proposed exclusion from coverage, including whether the proposed uniform numerical threshold for excluding persons who do not regularly engage in providing a covered product or service is warranted and if not, what alternatives should be considered. For example, the Bureau seeks comment on whether the threshold should be higher or lower, determined by aggregating the number of times all covered products are offered or provided, or incorporate other elements. The Bureau also seeks comment on the proposal to base the exclusion on total activities in the current and preceding calendar years. Finally, the Bureau seeks comment on whether to adopt a grace period or other transition mechanism for entities when they first cross the 25-consumer threshold.

1040.3(b)(4)

Merchants, retailers, and other sellers of nonfinancial goods and services generally may be subject to the proposed rule when acting as creditors as defined by Regulation B when they extend consumer credit or participate in consumer credit decisions, or when they engage in collection on or sale of these consumer credit accounts, unless they are excluded from the Bureau's rulemaking authority under Dodd-Frank section 1027(a)(2). Section 1027(a)(2)(A) generally excludes these activities by a merchant, retailer, or other seller of nonfinancial goods or services to the extent that person extends credit directly to a consumer exclusively for the purchase of a nonfinancial good or service directly from that person. Section 1027(a)(2) also states, however, that the general exclusion in section 1027(a)(2)(A) is limited by subparagraphs (B) and (C) of section 1027(a)(2).[502] As a result, in several circumstances described in subparagraphs (B) and (C) of section 1027(a)(2) (outlined below), the proposed rule generally would apply to merchants, retailers, and other sellers of nonfinancial goods or services providing extensions of consumer credit covered by proposed § 1040.3(a) that is of the type described in section 1027(a)(2)(A) (described above). In proposed § 1040.3(b)(4), the Bureau proposes one exception to this general rule, for engaging in assignment, sale, or other conveyance of a certain type of consumer credit as described below.

To explain this proposed exemption, it is necessary to describe further the limitations on the merchant creditor exclusion in Dodd-Frank section 1027(a)(2). As noted above, there are a number of circumstances when merchants engaged in these activities are not excluded by Dodd-Frank section 1027(a)(2). Section 1027(a)(2)(B) confers authority upon the Bureau generally over such extensions of consumer credit and associated debt collection activities by the merchants in three circumstances, set forth in subparagraphs (i), (ii), and (iii) of section 1027(a)(2)(B) respectively. Subparagraph (i) relates to certain circumstances where the merchant, retailer, or other seller "assigns, sells, or otherwise conveys" a debt to a third party. Subparagraph (ii) relates to certain circumstances where the amount of credit extended significantly exceeds the value of a good or service. Subparagraph (iii), as clarified by Dodd-Frank section 1027(a)(2)(C), relates to certain circumstances where a merchant creditor is engaged significantly in providing consumer financial products and services and imposes a finance charge.

Proposed § 1040.3(b)(4) would provide an exemption from coverage under Part 1040 to merchants, retailers, and other sellers of nonfinancial goods or services extending consumer credit as described in section 1027(a)(2)(A)(i) when only the first of these three circumstances described above is present and the second and third of these circumstances is not present. If the Bureau did not adopt this proposed exemption, then merchants extending credit subject to ECOA by allowing consumers to defer payment for goods or services—even without imposing a finance charge—would themselves be covered by the proposed rule to the extent they were to sell, assign, or otherwise convey that credit account, when not in delinquency or default, to a third party consistent with Dodd-Frank section 1027(a)(2)(B)(i). Such sale, assignment, or conveyance could occur, for example, in certain types of commercial borrowing engaged in by merchants, such as factoring, or collateralized lines of credit under which the merchant assigns its interest in its receivables. However, under the proposed exemption, such merchants would not be covered by Part 1040 in this context unless the amount of credit they extended significantly exceeds the value of the good or service or they engage significantly in extending credit with a finance charge.[503] Thus, unless either of those circumstances is present, the proposal would not affect the cost of credit of such merchants when they are engaged in such business borrowing activities. By contrast, for example, when the merchants are significantly engaged in extending consumer credit with a finance charge (generally covered by TILA and Regulation Z), however, the proposed rule generally would apply.

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[500] The definition of remittance transfer in Regulation E is limited to transactions conducted by a remittance transfer provider in the normal course of its business. 12 CFR 1005.30(f)(1); *see also* Regulation E comment 30(f)–2 ("[w]hether a person provides remittance transfers in the normal course of business depends on the facts and circumstances"). Regulation E further provides a safe harbor whereby persons providing 100 or fewer transfers in the current and prior calendar years are deemed not to be remittance transfer providers. 12 CFR 1005.30(f)(2). Thus, the proposed rule would not apply to transfers provided by persons who are not remittance transfer providers, because such transfers are not "remittance transfers" as defined by Regulation E.

[501] For example, the definition of creditor in ECOA and Regulation B and debt collector in the FDCPA refer to regular activity but do not specify a numeric threshold.

[502] When the general exclusion in section 1027(a)(2)(A) does apply, the merchant would be excluded by proposed § 1040.3(b)(5). As discussed below, that proposed provision would clarify that the proposal would not apply to persons when they are excluded from the rulemaking authority of the Bureau by Dodd-Frank section 1027 or 1029.

[503] *See* Dodd-Frank sections 1027(a)(2)(B)(ii) and (iii); 12 U.S.C. 5517(a)(2)(B)(ii) and (iii).

Proposed § 1040.3(b)(4)(i) would thus exclude from the coverage of proposed part 1040 merchants, retailers, or other sellers of nonfinancial goods or services to the extent providing an extension of consumer credit covered by proposed § 1040.3(a)(1)(i) and described by Dodd-Frank section 1027(a)(2)(A)(i) in connection with a credit transaction pursuant to Dodd-Frank section 1027(a)(2)(B)(i) unless the same credit transactions are also credit transactions pursuant to Dodd-Frank section 1027(a)(2)(B)(ii) or (iii). Thus, a merchant who is a creditor under Regulation B that is extending consumer credit as described in Dodd-Frank section 1027(a)(2)(A)(i) would be eligible for this exemption with respect to such consumer credit transactions when they are sold, assigned, or otherwise conveyed to a third party, if the consumer credit was not extended in an amount that significantly exceeded the value of the good or service under section 1027(a)(2)(B)(ii) and did not have a finance charge under section 1027(a)(2)(B)(iii) (or it did have a finance charge but the creditor was not engaged significantly in that type of lending under section 1027(a)(2)(C)(i)). Proposed § 1040.3(b)(4) would only exempt a merchant, retailer, or seller of the nonfinancial good or service and therefore would not affect coverage of other persons who may conduct servicing, debt collection activities, or provide covered products and services pursuant to proposed § 1040.3(a) in connection with the same extension of consumer credit. As discussed below in the Section-by-Section Analysis to proposed comments 4–1 and 4–2, those providers would be subject to the proposed rule.

Further, the exclusion in proposed § 1040.3(b)(4)(ii) would apply to a merchant who purchases or acquires credit extended by another merchant in a sale, assignment, or other conveyance that is subject to Dodd-Frank section 1027(a)(2)(B)(i). As a result, the proposed rule would not apply, for example, to a merchant who, in a merger or acquisition transaction, acquires customer accounts of another merchant who had extended credit with no finance charge and not in an amount that significantly exceeded the value of the goods or services (*i.e.*, credit not subject to Dodd-Frank section 1027(a)(2)(B)(ii) or (iii)).

The Bureau invites comment on the exception in proposed § 1040.3(b)(4) including on whether the Bureau should consider alternatives in defining this exception, and if so, particular definitions or changes the Bureau should consider and why.

1040.3(b)(5)

The proposed rule would not apply to persons to the extent they are excluded from the rulemaking authority of the Bureau under Dodd-Frank sections 1027 and 1029. For the sake of clarity, the Bureau proposes to make this limitation an explicit exemption in proposed § 1040.3(b)(5). Proposed § 1040.3(b)(5) thus would clarify that Part 1040 would not apply to a person to the extent the Bureau lacks rulemaking authority over that person or a product or service offered or provided by the person under Dodd-Frank sections 1027 and 1029 (12 U.S.C. 5517 and 5519).

However, the application of proposed § 1040.4 would be limited under proposed § 1040.3(b)(5) only to the extent that sections 1027 and 1029 constrain the Bureau's authority. Consistent with these restraints in sections 1027 and 1029, the Bureau may have section 1028 rulemaking authority in certain circumstances over a person that assumes or seeks to use an arbitration agreement entered into by another person over whom the Bureau lacked such authority. Notably, entities excluded from Bureau rulemaking authority under sections 1027 and 1029 may still be covered persons as defined by Dodd-Frank section 1002(6). Thus, proposed § 1040.4 may apply to a provider that assumes or seeks to use an arbitration agreement entered into by a covered person over whom the Bureau lacks rulemaking authority under Dodd-Frank sections 1027 and 1029 with respect to the activity at issue.

For example, proposed § 1040.4 may apply to a provider that is a debt collector as defined in the FDCPA collecting on debt arising from a consumer credit transaction originated by a merchant, even if the merchant would be exempt under proposed § 1040.3(b)(5) because the merchant is excluded from Bureau rulemaking authority under Dodd-Frank section 1027 for the particular extension of consumer credit at issue. As noted in the discussion of proposed § 1040.3(a)(10) above, for example, hospitals, doctors, and other service providers extending incidental ECOA credit would not be subject to the requirements of § 1040.4 to the extent the Bureau lacks rulemaking authority over them under Dodd-Frank section 1027. Similarly, proposed § 1040.4 may apply to a provider that is acquiring an automobile loan originated by an automobile dealer in circumstances where the automobile dealer is exempt by proposed § 1040.3(b)(5) because the auto dealer is excluded from Bureau rulemaking authority under Dodd-Frank section 1029.

Section 1040.4 Limitations on the Use of Pre-Dispute Arbitration Agreements

Dodd-Frank section 1028(b) authorizes the Bureau to prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that doing so is in the public interest and for the protection of consumers. Section 1028(b) also requires that the findings in such rule be consistent with the Study conducted under Dodd-Frank section 1028(a). Section 1028(d) further states that any regulation prescribed by the Bureau under section 1028(b) shall apply to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation.[504] Pursuant to this authority and the findings set forth in greater detail in Part VI above, the Bureau proposes § 1040.4, which would set forth the conditions or limitations that the Bureau would impose on providers that use pre-dispute arbitration agreements entered into after the compliance date.

Specifically, proposed § 1040.4 would contain three provisions. Proposed § 1040.4(a)(1) would generally prohibit providers from seeking to rely in any way on a pre-dispute arbitration agreement entered into after the compliance date with respect to any aspect of a class action that is related to any of the consumer financial products or services covered by proposed § 1040.3. Proposed § 1040.4(a)(2) would require providers, upon entering into a pre-dispute arbitration agreement for a product or service covered by proposed § 1040.3 after the compliance date, to include a specified plain-language provision in their pre-dispute arbitration agreements disclaiming the agreement's applicability to class actions. And proposed § 1040.4(b) would require a provider that includes a pre-dispute arbitration agreement in its consumer contracts to submit specified arbitral records to the Bureau for any pre-dispute arbitration agreement entered into after the compliance date.

Each of these three proposed provisions contains the phrase "entered into." To aid interpretation of proposed

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[504] For further discussion of the compliance date, see the Section-by-Section Analysis to proposed § 1040.5(a), below.

§ 1040.4, the Bureau proposes to add in the official interpretations a series of examples of what would and would not constitute "entering into" a pre-dispute arbitration agreement. As noted above, the term "entering into" appears in Dodd-Frank section 1028(d), which states that any rule prescribed by the Bureau under section 1028(b) shall apply to any pre-dispute arbitration agreement "entered into" after the end of the 180-day period beginning on the rule's effective date. The phrase "entered into" is not defined in section 1028 or anywhere else in the Dodd-Frank Act. The Bureau interprets the phrase "entered into" generally to include any circumstance in which a person agrees to undertake obligations or gains rights in an agreement. The Bureau believes that this interpretation best effectuates the purposes of section 1028, is practical and clear in its meaning, and is reasonable.

Proposed comment 4–1.i would provide illustrative examples of when a provider enters into a pre-dispute arbitration agreement for purposes of § 1040.4 and proposed comment 4–1.ii would provide illustrative examples of when a provider does not enter into a pre-dispute arbitration agreement for purposes of § 1040.4. Proposed comments 4–1.i.A through C would state that examples of when a provider enters into a pre-dispute arbitration agreement include, but are not limited to, the following three scenarios. First, proposed comment 4–1.i.A would explain that a provider enters into a pre-dispute arbitration agreement where it provides to a consumer a new product or service that is subject to a pre-dispute arbitration agreement, and the provider is a party to the pre-dispute arbitration agreement. The Bureau does not interpret this example to include new charges on a credit card covered by a pre-dispute arbitration entered into before the compliance date. Second, proposed comment 4–1.i.B would explain that a provider enters into a pre-dispute arbitration agreement where it acquires or purchases a product covered by proposed § 1040.3 that is subject to a pre-dispute arbitration agreement and becomes a party to that agreement, even if the person selling the product is excluded from coverage under proposed § 1040.3(b). Third, proposed comment 4–1.i.C would explain that a provider enters into a pre-dispute arbitration agreement where it adds a pre-dispute arbitration agreement to an existing product or service. The Bureau interprets Dodd-Frank section 1028(b) to include authority that would allow the Bureau to require that providers comply with proposed § 1040.4 to the extent they choose to add pre-dispute arbitration agreements to existing consumer agreements after the compliance date.

Proposed comments 4–1.ii would then state that examples of when a provider *does not* enter into a pre-dispute arbitration agreement include, but are not limited to, two scenarios. Proposed comment 4–1.ii.A would state the first scenario—that a provider does not enter into a pre-dispute arbitration agreement where it modifies, amends, or implements the terms of a product or service that is subject to a pre-dispute arbitration agreement that was entered into before the compliance date. However, a provider would be considered to enter into a pre-dispute arbitration agreement where the modification, amendment, or implementation constitutes providing a new covered product or service. Proposed comment 4–1.ii.A would also address the scenario in which a provider modifies, amends, or implements the terms of a pre-dispute arbitration agreement itself. Proposed comment 4–1.ii.B would address the second scenario and would state that a provider does not enter into a pre-dispute arbitration agreement where it acquires or purchases a product that is subject to a pre-dispute arbitration but does not become a party to that agreement. The Bureau believes that the phrase entered into an agreement as used in Dodd Frank section 1028 can be interpreted to permit application of a Bureau regulation issued under the provision to agreements modified or amended after the compliance date, in certain circumstances. However, for the purposes of this proposal, the Bureau is proposing to interpret the phrase more narrowly, as reflected by, for example, proposed comment 4–1.ii.B. The Bureau solicits comment on whether, for the purposes of the proposal, it should instead interpret the phrase more broadly to encompass certain modifications or amendments of an agreement after the compliance date and what the impacts of such an interpretation would be.

Proposed § 1040.4, in general, would apply to a provider regardless of whether the provider itself entered into a pre-dispute arbitration agreement, as long as the agreement was entered into after the compliance date.[505] Proposed comment 4–2 would clarify this by explaining how proposed § 1040.4 applies to a provider that does not itself enter into a pre-dispute arbitration agreement.

Proposed comment 4–2 would explain that pursuant to proposed § 1040.4(a)(1), a provider cannot rely on any pre-dispute arbitration agreement entered into by another person after the effective date with respect to any aspect of a class action concerning a product or service covered by § 1040.3 and pursuant to § 1040.4(b). That comment would further clarify that a provider may be required to submit certain specified records related to claims filed in arbitration pursuant to such pre-dispute arbitration agreements and cross-reference comment 4(a)(2)–1 which is discussed below. The comment would go on to provide an example of a debt collector collecting on covered consumer credit that is prohibited by § 1040.4(a)(1) from relying on a pre-dispute arbitration agreement entered into by the creditor with respect to a class action even when the debt collector does not itself enter a pre-dispute arbitration agreement. The Bureau seeks comment whether proposed comments 4–1 and –2 are helpful in facilitating compliance, and whether the Bureau should provide additional or different examples.

4(a) Use of Pre-Dispute Arbitration Agreements in Class Actions

For the reasons discussed more fully in Part VI and pursuant to its authority under Dodd-Frank section 1028(b), the Bureau proposes § 1040.4(a). Proposed § 1040.4(a)(1) would require that a provider shall not seek to rely on a pre-dispute arbitration agreement entered into after the compliance date with respect to any aspect of a class action that is related to any of the consumer financial products or services covered by proposed § 1040.3, unless the court has ruled that the class action may not proceed and any appellate review of that ruling has been resolved.

Proposed § 1040.4(a)(2) would generally require providers to ensure that any pre-dispute arbitration agreements entered into after the compliance date contain a specified provision disclaiming the applicability of those agreements to class action cases concerning a consumer financial product or service covered by the proposed rule.

The Bureau notes that proposed § 1040.4(a) would permit an arbitration agreement that allows for class arbitration, provided that a consumer could not be required to participate in class arbitration instead of class litigation. In other words, a pre-dispute arbitration agreement that allows a consumer to choose whether to file a class claim in court or in arbitration would be permissible under proposed § 1040.4(a), although an arbitration agreement that permits the claim to only be filed in class arbitration would not be permissible.[506]

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[505] The Bureau believes this is consistent with Dodd-Frank sections 1028(b) and 1028(d), which authorize the Bureau to prohibit or impose conditions or limitations on the use of a pre-dispute arbitration agreement between a covered person and a consumer (section 1028(b)) and state that shall apply to any agreement between a consumer and a covered person entered into after the compliance date (section 1028(d)).

Small Business Review Panel Recommendations

As discussed above, the Bureau preliminarily finds that the proposed rule would be in the public interest and for the protection of consumers and would be consistent with the Study. Those findings are subject to further revision in light of comments received, however. In addition, the Bureau continues to consider recommendations made to it by the SBREFA Panel Report as part of the SBREFA process.[507] Some of the broader concerns from SERs regarding whether to adopt the class proposal are addressed above in Part VI, as well as below in Part VIII (the Section 1022(b)(2) Analysis) and Part IX (the Regulatory Flexibility Analysis). In the discussion that follows, the Bureau considers other recommendations contained in the Panel Report.

As the Panel Report indicates, many of the SERs expressed concern about the impacts of limiting the use of pre-dispute arbitration agreements in class action litigation. Specifically, the SERs expressed concern that defending even one class action litigation—including defense counsel fees and any settlements ultimately paid out—could put a small entity out of business. In response to these concerns, the SBREFA Panel recommended that the Bureau continue to evaluate the costs to small entities of defending class actions and how such costs may differ from the costs to larger entities.

This proposed rule's impacts analyses pursuant to section 1022(b)(2) of the Dodd-Frank Act (Part VIII below) and section 603 of the Regulatory Flexibility Act[508] (Part IX below) examines several aspects of costs related to small entities. The Bureau believes that small consumer finance entities face class litigation at a lower rate than entities that are not small. Depository institutions with less than $600 million in assets, for example, make up the vast majority of depositories overall; however, only about one Federal class settlement per year with depository institutions analyzed in the Study involved institutions below that threshold. Further, the magnitude of the settlements, measured by payments to class members, is also considerably smaller. The documented payments to class members from all cases that involve smaller depository institutions added together is under $2 million over the five years analyzed in the Study. The Bureau's Section 1022(b)(2) Analysis also notes several factors that affect how small entities in consumer financial markets may respond to the proposed rule in a different manner than larger entities.

Further, despite the fact that the Bureau is not certifying, at this time, that the proposed rule would not have a significant economic impact on a substantial number of small entities, the Bureau believes that the arguments and calculations outlined both in Section 1022(b)(2) Analysis, as well as the arguments and calculations that follow, strongly suggest that the proposed rule would indeed not have a significant economic impact on a substantial number of small entities in any of the covered markets. As discussed in greater detail in the Section 1022(b)(2) Analysis, while the expected cost per provider from the Bureau's rule is about $200 per year from Federal class cases, these costs would not be evenly distributed across small providers. In particular, the Bureau estimates that about 25 providers per year would be involved in an additional Federal class settlement—a considerably higher expense than $200 per year. In addition, the additional Federal cases filed as class litigation that would end up not settling on class basis (121 per year according to the Bureau's estimates) are also likely to result in a considerably higher expense that $200. However, as noted in the Regulatory Flexibility Analysis, the vast majority of the providers covered by the proposal would not experience any of these effects.

The Bureau also notes that, under proposed § 1040.3(b)(4), its proposed rule would not apply to any person when providing a product or service covered by § 1040.3(a) that the person and any of its affiliates collectively provide to no more than 25 consumers in the current calendar year and to no more than 25 consumers in the preceding calendar year. Consistent with the Panel's recommendation, however, the Bureau solicits further feedback on the costs of defending class actions and whether those costs may differ or be disproportionate for small entities as compared to larger ones.

The Panel Report reflects a concern expressed by several SERs that preventing providers from relying on pre-dispute arbitration agreements in class litigation would affect the small entities' ability to obtain insurance coverage for class action litigation defense costs, which the SERs noted was already expensive. The Panel recommended that the Bureau further assess the availability and costs of insurance for small entities including impacts on insurance premiums and deductibles and any costs related to pursuing unpaid claims against an insurer, particularly whether and how insurance covers class action defense costs and whether exposure to class actions would impact the cost and availability of this insurance.

As discussed in the Bureau's Section 1022(b)(2) Analysis, the Bureau recognizes that, in response to the Bureau's proposal, providers may make various investments to reduce the potential financial impacts of class litigation. For example, providers might opt for more comprehensive insurance coverage that would presumably cover more class litigation exposure or would have a higher reimbursement limit. However, during the Small Business Review Panel, the SERs noted that it often is not clear to them which type of class litigation exposure a policy covers nor was it clear that providers typically ask insurers about this sort of coverage. The SERs explained that their coverage is often determined on a more specialized case-by-case basis that limits at least small providers' ability to plan ahead. Larger firms may have more sophisticated policies and more systematic understanding of their coverage, however, or they may self-insure. Finally, the insurance providers might require at least some of the changes to compliance discussed above as a prerequisite for coverage or for a discounted premium. Consistent with the Panel's recommendation, the Bureau seeks comment on whether and, if so, how the rule would affect class action litigation defense insurance costs for covered entities.

Some SERs rejected the Bureau's reasoning, discussed in Part VI, that the potential for class action litigation encourages companies to comply with relevant consumer finance laws and deters companies from practices that may harm consumers. The Panel recommended that the Bureau seek comment on whether small entities engage in different compliance practices than large entities and that the Bureau further analyze the impact of class actions on small entities' conduct. As discussed more fully above, the Bureau continues to believe that, with respect to both small entities and larger entities, the availability of class actions encourages compliance with relevant consumer finance laws and deters practices that may harm consumers. Consistent with the Panel's recommendation, the Bureau seeks comment on the impact of class action exposure on providers' compliance and specifically on whether those compliance efforts might differ for smaller entities as compared to larger ones.

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[506] In its SBREFA Outline, the Bureau noted that it was considering an alternative that would have given consumer financial services providers discretion to use arbitration agreements that required that class proceedings be conducted in arbitration instead of court, provided those arbitration proceedings satisfied minimum standards of fairness. The Bureau has not heard from any stakeholders that this option is preferable to the class proposal. Nonetheless, the Bureau will continue to consider feedback regarding this alternative.

[507] *See supra* Part IV (Post-Study Outreach).

[508] 5 U.S.C. 601, *et seq.*

A few of the SERs further expressed concern that the Bureau's class proposal would expose their businesses to more class litigation which could, in turn, increase their companies' litigation defense costs and therefore increase the cost of business credit that the entities rely on to facilitate their operations. These SERs stated that they believed that their lenders would increase the cost of business credit for their companies if their companies could no longer rely on arbitration agreements in class actions. The Panel recommended that the Bureau consider whether there are alternative actions that the Bureau could take that would still accomplish the Bureau's goals of encouraging increased compliance with relevant consumer financial laws and providing relief to harmed consumers while not increasing small entities' exposure to class action lawsuits that could increase their cost of credit.

The Bureau has analyzed the potential impacts on small providers' own costs of credit and the availability of other alternatives, as discussed further in Part IX (the Regulatory Flexibility Analysis). Consistent with that more extended discussion and the Panel's recommendation, the Bureau seeks comment on whether proposed § 1040.4(a) would increase the cost of credit for small entities and whether there are alternatives to proposed § 1040.4(a) that would accomplish the Bureau's objectives while mitigating any potential increases to the cost of credit for small entities. The Bureau also seeks comment on whether and to what extent commercial lenders inquire in the course of underwriting a loan about a potential borrower's exposure to class actions or ability to rely on pre-dispute arbitration agreements to reduce exposure to class actions.

The SERs suggested alternatives to the Bureau's class proposal that, in their view, would protect small entities from the costs of class litigation. One such alternative would be exempting small entities from some, or all, of the proposed rule's requirements. Accordingly, the Panel recommended that the Bureau evaluate the impact of its class proposals on small entities and consider exempting small entities from some requirements of the class proposal or consider delaying implementation of the rule for small entities.

At this time, the Bureau is not proposing an exemption for small entities because it believes that the availability of class actions protects consumers who do business with small entities. While the Study shows that small entities are less likely to have arbitration agreements than larger entities,[509] the Bureau is aware that both large and small entities commit violations of consumer financial laws in ways that harm consumers. The Bureau believes that the availability of meaningful relief is important in such cases. Further, it has considered the impact of its class proposals on small entities, including the concerns expressed by SERs about the cost of litigating class actions, and as discussed in Part IX and above believes that they would be relatively modest. Consequently, the Bureau seeks comment on whether the Bureau should exempt small entities from some or all requirements of the proposed rule. The Bureau seeks comment on whether adopting a small entity exemption would advance the purposes of the proposed rule, namely, the furtherance of the public interest and the protection of consumers regarding the use of pre-dispute arbitration agreements in agreements for consumer financial products or services.

In the event the Bureau were to adopt a small entity exemption, the Bureau seeks comment on how to formulate such an exemption for all small providers or for small providers in particular industries. One approach could be to use the Small Business Administration (SBA) size standards to determine whether an entity is small, although that could involve complexity particularly as to entities that might qualify in more than one category.[510] The Bureau could also use some other standard that would apply to all providers based on, for example, the volume of covered products or services provided to consumers or revenue derived from such products or services. The Bureau could also adopt varying standards based on other criteria for each covered market, but that could involve the same complexity as using the SBA size standards. Apart from what standard the Bureau might adopt, the Bureau also seeks comment on whether the Bureau would need to monitor which entities would avail themselves of such an exemption and, if so, how the Bureau should do so. Finally, the Bureau seeks comment on whether, if it were to adopt an exemption, it should monitor exempt entities' reliance on arbitration agreements in class actions, such as by requesting that such entities submit copies of motions to compel arbitration that they file in class action cases.

Some of the SERs also suggested that, rather than prohibit providers from relying on pre-dispute arbitration agreements in class actions, the Bureau instead mandate improved disclosures regarding arbitration and educate consumers regarding their dispute resolution rights. These SERs stated that consumer education could encourage consumers to pursue individual claims in small claims court or arbitration that they might otherwise abandon or be discouraged from pursuing, thereby reducing the need for class action litigation to address consumer harms. The SERs thus echoed what some other industry participants have told the Bureau—that, rather than limit the use of arbitration in any way, the Bureau should advocate for arbitration and encourage consumers to take their individual claims before an arbitrator. The Panel recommended that the Bureau consider whether, through improved disclosure requirements and consumer education initiatives, the Bureau could increase consumers' awareness and understanding of their available dispute resolution mechanisms and use of these mechanisms to resolve disputes and redress consumer harms.

The Bureau has considered the issue carefully and preliminarily concludes that better consumer understanding through either disclosure or consumer education would not lead to a material increase in the filing of individual claims to the level necessary that would alleviate the need for class action litigation to remedy large-scale consumer harms. This analysis is described further below in Part IX (the Regulatory Flexibility Analysis). As described above in Part VI, consumer financial claims often involve claims for such small amounts that they are impractical for consumers to pursue on an individual basis in any forum—litigation or arbitration. Unlike class actions, which permit consumers to pursue their claims as a group and share the costs of bringing the claim, increased disclosure and consumer education alone would not address this underlying economic obstacle that prevents most consumers from obtaining relief for violations of law.

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[509] *See* Study, *supra* note 2, section 2, at 16–17.

[510] SBA has established numerical definitions, or "size standards," for all for-profit industries. Size standards represent the largest size that a business (including its subsidiaries and affiliates) may be to remain classified as a small business concern for purposes of qualifying for SBA and other Federal programs. *See* Small Bus. Admin., Table of Small Business Size Standards (updated Feb. 26, 2016), *available at https://www.sba.gov/content/small-business-size-standards.*

Further, where a provider has violated the law, many consumers may be unaware that they have been harmed. Class actions address this problem, because, typically, all consumers harmed by a course of conduct become part of the class. In contrast, improved disclosures do not, because improved awareness of dispute resolution options is not likely to affect a consumer's behavior where the consumer does not know that the consumer has suffered a legally actionable harm. Thus, the Bureau believes that making class actions available to consumers would result in consumers being able to pursue their claims on a much greater scale than would improving disclosures and increasing consumer education.

Consistent with the Panel's recommendation, and to gather additional views about this issue, the Bureau solicits comment on whether improved disclosure or consumer education could increase consumers' understanding of dispute resolution and use of individual arbitration to resolve disputes and redress consumer harms sufficient to obviate the need for the class proposal. The Bureau also continues to evaluate whether it should provide additional consumer education materials regarding dispute resolution rights, in addition to rather than in lieu of the proposed interventions.

Finally, the SERs expressed concern about exposure to class action litigation based on certain statutory causes of action that have no limit on statutory damages in a class action, such as the TCPA.[511] The SERs stated that a small entity may be unable to absorb a class action award or settlement of claims brought under a statute, like the TCPA, where damages are uncapped. The Panel recommended that the Bureau evaluate and seek comment on whether specific features of particular causes of action affect the availability of consumer relief, the deterrent effect of class actions, and consequences to small entities arising from settlement or recovery for those causes of action.

The Bureau has considered, but is not at this time proposing, an exemption to this part for particular causes of action. The Bureau believes that Congress and State legislatures, as applicable, are better positioned than the Bureau to establish the appropriate level of damages for particular harms under established statutory schemes. While the Bureau recognizes the concern, expressed by SERs, among others, that particular statutes may create the possibility of disproportionate damages awards, the Bureau believes that Congress and the courts are the appropriate institutions to address such issues. For example, industry groups have lobbied, and may continue to lobby Congress and the FCC to amend the TCPA, including its statutory damages scheme.[512] The Bureau believes it is particularly appropriate to defer to Congress and the courts on the TCPA, which the Bureau does not administer.[513] The Bureau nevertheless seeks comment on its approach to this issue, including whether there are compelling reasons to exclude particular causes of action from the proposed rule, bearing in mind that legislatures are ultimately charged with setting that balance.

4(a)(1) General Rule

In furtherance of the Bureau's goal to ensure that class actions are available to consumers who are harmed by providers of consumer financial products and services, for the reasons discussed above in Part VI and in accordance with the Bureau's authority under Dodd-Frank section 1028(b), the Bureau proposes § 1040.4(a)(1). Proposed § 1040.4(a)(1) would require that a provider shall not rely in any way on a pre-dispute arbitration agreement entered into after the compliance date with respect to any aspect of a class action that is related to any of the consumer financial products or services covered by proposed § 1040.3 including to seek a stay or dismissal of particular claims or the entire action, unless and until the presiding court has ruled that the case may not proceed as a class action and, if that ruling may be subject to appellate review on an interlocutory basis, the time to seek such review has elapsed or the review has been resolved.[514]

Proposed § 1040.4(a)(1) would bar providers from relying on a pre-dispute arbitration agreement entered into after the compliance date of the rule, as described above, even if the pre-dispute arbitration agreement does not include the provision required by § 1040.4(a)(2). Examples of this scenario include where a provider uses preprinted agreements that would be temporarily excepted from proposed § 1040.4(a)(2) (*see* proposed § 1040.5(b)); a debt collector with respect to a pre-dispute arbitration agreement entered into after the compliance date by a creditor that was excluded from coverage under proposed § 1040.3(b); and where a provider has violated proposed § 1040.4(a)(2) by failing to amend its agreement to include the required provision. The Section-by-Section Analysis to proposed § 1040.3(a)(10), above, contains additional examples, pertaining to debt collection by merchants, of scenarios where proposed § 1040.4(a)(1) would apply even where the pre-dispute arbitration agreements itself is not required to contain the provision outlined in proposed § 1040.4(a)(2).

Proposed § 1040.4(a)(1) would prevent providers from relying on a pre-dispute arbitration agreement in a class action unless and until the presiding court has ruled that the case may not proceed as a class action, and, if the ruling may be subject to interlocutory appellate review, the time to seek such review has elapsed or the review has been resolved. For example, when a case is filed as a putative class action and a court has not yet ruled on a motion to certify the class, proposed § 1040.4(a)(1) would prohibit a motion to compel arbitration that relied on a pre-dispute arbitration agreement. If the court denies a motion for class certification and orders the case to proceed on an individual basis, and the ruling may be subject to interlocutory appellate review—pursuant to Rule 23(f) of the Federal Rules of Civil Procedure or an analogous State procedural rule—proposed § 1040.4(a)(1) would prohibit a motion to compel arbitration based on a pre-dispute arbitration agreement until the time to seek appellate review has elapsed or appellate review has been resolved. If the court denies a motion for class certification and the ruling is either not subject to interlocutory appellate review, the time to seek review has elapsed, or the appellate court has determined that the case may not proceed as a class action, proposed § 1040.4(a)(1) would no longer prohibit a provider from relying on a pre-dispute arbitration agreement in the case.

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[511] The TCPA is a statute implemented by the Federal Communications Commission that affords consumers certain rights and protections related to telephone solicitations and the use of automated telephone equipment, such as automatic dialing systems. 47 U.S.C. 227. TCPA allows for actual damages (which are awarded rarely) or statutory damages (authorized by the statute without regard to the degree of harm to the plaintiff) ranging from $500 to $1,500 per violation, with each unsolicited call or text message considered a separate violation. 47 U.S.C. 227(b)(3). The TCPA does not place an aggregate cap on statutory damages in class actions. Consequently, statutory damages may be substantial if the same conduct applies to a large class of consumers.

[512] *See, e.g.,* Letter from U.S. Chamber of Com., et al., to FTC, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02–278 (Feb. 2, 2015), *available at https://www.uschamber.com/sites/default/files/2.2.15-_multi-association_letter_to_fcc_on_tcpa.pdf*; Credit Union Nat'l Ass'n, *CUNA Sends Letter to Energy and Commerce Subcommittee about TCPA Order Concerns,* CUNA.org (Nov. 17, 2015), *available at http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Removing-Barriers-Blog/Removing-Barriers-Blog/CUNA-Sends-Letter-to-Energy-and-Commerce-Subcommittee-about-TCPA-Order-Concerns/.*

[513] The Bureau further notes that the Supreme Court this term is considering a challenge that would limit the scope of statutory damage claims in class actions. *See Spokeo, Inc.* v. *Robins, cert. granted,* 135 S. Ct. 1892 (2015).

[514] The Bureau notes that the prohibition in proposed § 1040.4(a)(1) would apply to providers' relying on provisions in pre-dispute arbitration agreements, as well as on the overall agreement.

Proposed comment 4(a)(1)–1 provides a non-exhaustive list of examples illustrating what it means for a provider to "rely on a pre-dispute arbitration agreement with respect to any aspect of a class action." The proposed comment would provide six examples: Seeking dismissal, deferral, or stay of any aspect of a class action (proposed comment 4(a)(1)–1.i); seeking to exclude a person or persons from a class in a class action (proposed comment 4(a)(1)–1.ii); objecting to or seeking a protective order intended to avoid responding to discovery in a class action (proposed comment 4(a)(1)–1.iii); filing a claim in arbitration against a consumer who has filed a claim on the same issue in a class action (proposed comment 4(a)(1)–1.iv); filing a claim in arbitration against a consumer who has filed a claim on the same issue in a class action after the trial court has denied a motion to certify the class but before an appellate court has ruled on an interlocutory appeal of that motion, if the time to seek such an appeal has not elapsed and the appeal has not been resolved (proposed comment 4(a)(1)–1.v); and filing a claim in arbitration against a consumer who has filed a claim on the same issue in a class action after the trial court has granted a motion to dismiss the claim where the court has noted that the consumer has leave to refile the claim on a class basis, if the time to refile the claim has not elapsed (proposed comment 4(a)(1)–1.vi).

One purpose of proposed comments 4(a)(1)–1.iv through vi would be to prevent providers from evading proposed § 1040.4(a)(1) by filing an arbitration claim against a consumer who has already filed a claim on the same issue in a putative class action. The Bureau notes, however, that proposed § 1040.4(a)(1) would not prohibit a provider from continuing to arbitrate a claim that was filed before the consumer filed a class action claim. For example, if a provider files an arbitration claim to collect a debt from a consumer, and the consumer later files a class action claim, the arbitration of that claim would still be permitted to go forward, although, under proposed § 1040.4(a)(1) the provider could not use the pre-dispute arbitration agreement to block the class action.

The Bureau seeks comment on these examples and whether further clarification regarding when this provision would apply in the course of litigation would be helpful to providers. Specifically, the Bureau seeks comment on whether the language "claim on the same issue," which appears in proposed comment 4(a)(1)–1.v and vi, is sufficiently limiting and would not prevent, for example, arbitrations involving unrelated claims to go forward even if they involve the same consumer. The Bureau also seeks comment on whether entities may seek to circumvent or evade proposed § 1040.4(a)(1) and whether additional clarification would be needed to prevent such circumvention or evasion.[515]

Proposed comment 4(a)(1)–2 would state that, in a class action concerning multiple products or services only some of which are covered by proposed § 1040.3, the prohibition in proposed § 1040.4(a)(1) applies only to claims that concern the covered products or services. The Bureau seeks comment on this comment and whether providers need additional clarification regarding the application of proposed § 1040.4(a)(1) in class actions for multiple products and services, only some of which are covered by proposed § 1040.3.

4(a)(2) Provision Required in Covered Pre-dispute Arbitration Agreements

In furtherance of the Bureau's goal to ensure that class actions are available to consumers who are harmed by consumer financial service providers, for the reasons discussed above in Part VI and in accordance with the Bureau's authority under Dodd-Frank section 1028(b), proposed § 1040.4(a)(2) would generally require providers to ensure that pre-dispute arbitration agreements contain specified provisions explaining that the agreements cannot be invoked in class proceedings. These proposed requirements are discussed in greater detail below.

4(a)(2)(i)

Proposed § 1040.4(a)(2)(i) would state that, except as permitted by proposed § 1040.4(a)(2)(ii) and (iii) and proposed § 1040.5(b), providers shall, upon entering into a pre-dispute arbitration agreement for a product or service covered by proposed § 1040.3 after the compliance date, ensure that any such agreement contains the following provision:

> We agree that neither we nor anyone else will use this agreement to stop you from being part of a class action case in court. You may file a class action in court or you may be a member of a class action even if you do not file it.

Requiring a provider's arbitration agreement to contain such a provision would ensure that consumers, courts, and other relevant third parties, including potential purchasers, are made aware when reading the agreement that it may not be used to prevent consumers from pursuing class actions concerning consumer financial products or services covered by the proposed rule. Moreover, to the extent a provider attempts to invoke a pre-dispute arbitration agreement, consumers could invoke this contractual provision to enforce their right to proceed in court for class claims. The Bureau intends this provision to be limited to class action cases that concern a consumer financial product or service that would be covered by proposed § 1040.3. In addition, the Bureau intends the phrase "neither we nor anyone else shall use this agreement"—rather than merely "we shall not use this agreement"—to make clear to consumers that the proposed rule would bind both the provider that initially enters into the agreement and any third party that might later be assigned the agreement or otherwise seek to rely on it.

The Bureau has attempted to draft the proposed contractual provision—as well as the contractual provisions in proposed § 1040.4(a)(2)(ii) and (iii)—to be in plain language. While the Bureau does not believe that disclosure requirements or consumer education could lead to a material increase in the filing of individual claims, the Bureau does believe that consumers who consult their contracts should be able to access an understandable explanation of their dispute resolution rights.

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[515] The Bureau notes that it has the authority under Dodd-Frank section 1022(b)(1) to, among other things, issue orders or guidance after a rule to prevent evasions of Federal consumer financial law.

The Bureau intends the phrase "contains the following provision" in proposed § 1040.4(a)(2)(i) to clarify that the text specified by proposed § 1040.4(a)(2)(i) shall be included as a provision of the pre-dispute arbitration agreement, as for example, the FTC's Holder in Due Course Rule also requires.[516] Thus, providers may not—for example—include the required language as a separate notice or consumer advisory, except in certain circumstances that would be governed by proposed § 1040.4(a)(2)(iii). Further, similar to how the Bureau understands the provision required by the Holder in Due Course Rule, the Bureau intends the provision to create a binding legal obligation. As a result, if a consumer or attorney were unaware of proposed § 1040.4(a)(1), the Bureau expects that the provision required by proposed § 1040.4(a)(2)(i) would have a substantially similar legal effect through the operation of applicable contract law.

The Bureau seeks comment on proposed § 1040.4(a)(2)(i) generally. The Bureau also seeks comment on whether the rule should mandate that covered entities insert the provision into their pre-dispute arbitration agreements. In addition, the Bureau seeks comment on whether the provision, as drafted, is in plain language and would be understandable to consumers. The Bureau further seeks comment on whether the proposed provision would accomplish its purpose of binding both the provider that forms an initial agreement with the consumer and any future acquirers of it, as well as third parties that may seek to rely on it, such as debt collectors.

4(a)(2)(ii)

Proposed § 1040.4(a)(2)(ii) would permit providers to include in a pre-dispute arbitration agreement covering multiple products or services—only some of which are covered by proposed § 1040.3—an alternative provision in place of the one required by proposed § 1040.4(a)(2)(i). Proposed § 1040.4(a)(2)(ii) would require this alternative provision to contain the following text:

> We are providing you with more than one product or service, only some of which are covered by the Arbitration Agreements Rule issued by the Consumer Financial Protection Bureau. We agree that neither we nor anyone else will use this agreement to stop you being part of a class action case in court. You may file a class action in court or you may be a member of a class action even if you do not file it. This provision applies only to class action claims concerning the products or services covered by that Rule.

Under proposed § 1040.4(a)(2)(ii), providers using one contract for transactions involving both products and services covered by proposed § 1040.3 and products and services not covered by proposed § 1040.3 would have the option to—but would not be required to—use the alternative provision. Where contracts cover products and services covered by proposed § 1040.3 and products and services not covered by proposed § 1040.3, the Bureau believes that the alternative provision would improve consumer understanding because the alternative provision would more accurately describe consumers' dispute resolution rights. As with proposed § 1040.4(a)(2)(i), discussed above, the Bureau intends for the text to be included as a provision in the pre-dispute arbitration agreement and for the text to have binding legal effect.

The Bureau seeks comment on proposed § 1040.4(a)(2)(ii) generally. The Bureau also seeks comment on whether it would be appropriate to permit the use of an alternative provision; whether the text of the proposed provision would be understandable to consumers; whether providers should be permitted to specify which products being provided are covered by the Rule; and whether the Bureau should consider making the alternative provision mandatory, rather than optional, in contracts for multiple products and services, only some of which would be covered by the proposed rule.

4(a)(2)(iii)(A) and (B)

Proposed § 1040.4(a)(2)(iii) would set forth how to comply with proposed § 1040.4(a)(2) in circumstances where a provider enters into a pre-existing pre-dispute arbitration agreement that does not contain either the provision required by proposed § 1040.4(a)(2)(i) or the alternative permitted by proposed § 1040.4(a)(2)(ii). Under proposed § 1040.4(a)(2)(iii), within 60 days of entering into the pre-dispute arbitration agreement, providers would be required either to ensure that the agreement is amended to contain the provision specified in proposed § 1040.4(a)(2)(iii)(A) or provide any consumer to whom the agreement applies with the written notice specified in proposed § 1040.4(a)(2)(iii)(B). For providers that choose to ensure that the agreement is amended, the provision specified by proposed § 1040.4(a)(2)(iii)(A) would be as follows:

> We agree that neither we nor anyone else that later becomes a party to this pre-dispute arbitration agreement will use it to stop you from being part of a class action case in court. You may file a class action in court or you may be a member of a class action even if you do not file it.

For providers that choose to provide consumers with a written notice, the required notice provision specified by § 1040.4(a)(2)(iii)(B) would be as follows:

> We agree not to use any pre-dispute arbitration agreement to stop you from being part of a class action case in court. You may file a class action in court or you may be a member of a class action even if you do not file it.

The Bureau believes that by permitting providers to furnish a notice to consumers, in lieu of amending their agreements, the notice option afforded by proposed § 1040.4(a)(2)(iii)(B) would yield consumer awareness benefits while reducing the burden to providers for whom amendment may be challenging or costly. Further, the Bureau intends the notice option to ensure that consumers are adequately informed even if the provider that enters into a pre-existing agreement lacks a legally permissible means for amending the agreement to add the required provision. The Bureau notes that, whether the provider elects to ensure that the agreement is amended, chooses to provide the required notice, or violates proposed § 1040.4(a)(2)(iii) by failing to do either of the above, the provider would still be required to comply with proposed § 1040.4(a)(1).

The Bureau seeks comment on proposed § 1040.4(a)(2)(iii). The Bureau also seeks comment on whether the text of proposed § 1040.4(a)(2)(iii)(A) and (B) would be understandable to consumers. The Bureau further seeks comment on whether 60 days would be an appropriate timeframe for requiring providers to ensure that agreements are amended or provide notice, taking into consideration situations where, for example, providers are acquiring accounts.

As discussed in the Bureau's Section 1022(b)(2) Analysis below, buyers of medical debt would, in some cases, need to perform due diligence to determine how this proposed rule would apply to the debts they buy. For example, proposed § 1040.4(a)(2) would require buyers of consumer credit, including medical credit, when they enter into a pre-dispute arbitration agreement to amend the agreement to contain a provision—or send the consumer a notice—stating that the debt buyer would not invoke that pre-dispute arbitration agreement in a class action. In cases that may involve incidental credit under ECOA, debt buyers might face additional impacts from the rule from additional due diligence to determine which acquired debts arise from credit transactions,[517] or alternatively from the additional class action exposure created from sending consumer notices on debts that did not arise from credit transactions (*i.e.*, from potential over-compliance). The Bureau seeks comment on the extent of these impacts, and whether an exemption from the notice requirement in proposed § 1040.4(a)(2) would be warranted for buyers of medical debt, or whether the proposed rule should allow a medical debt buyer to send a tailored notice to the consumer that does not specify whether the underlying debt is covered credit in the first instance.

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[516] This rule prohibits a person who, in the ordinary course of business, sells or leases goods or services to consumers from taking or receiving a consumer credit contract that fails to contain a provision specified in the regulation stating that any holder of the contract is subject to all claims and defenses that the debtor could assert against the seller. 16 CFR 433.2.

Proposed comment 4(a)(2)–1 would highlight an important difference in the application of proposed § 1040.4(a)(2), as compared with proposed § 1040.4(a)(1). Proposed § 1040.4, in general, would apply to a provider regardless of whether the provider itself entered into a pre-dispute arbitration agreement, as long as the agreement was entered into after the compliance date. For example, proposed § 1040.4(a)(1) would prohibit a debt collector that does not enter into a pre-dispute arbitration agreement from moving to compel a class action case to arbitration on the basis of that agreement, so long as the original creditor entered into the pre-dispute arbitration agreement after the compliance date. Proposed § 1040.4(a)(2), in comparison, would apply to providers only when they enter into a pre-dispute arbitration agreement for a product or service.[518] Thus, proposed § 1040.4(a)(2) would not apply to the debt collector in the example cited previously; but it would apply to a debt buyer that acquires or purchases a product covered by proposed § 1040.3 and becomes a party to the pre-dispute arbitration agreement.[519] Proposed comment 4(a)(2)–1 would clarify this distinction by stating that the requirements of proposed § 1040.4(a)(2) would not apply to a provider that does not enter into a pre-dispute arbitration agreement with a consumer.

Proposed comment 4(a)(2)–2 would provide an illustrative example clarifying what proposed § 1040.4(a)(2)(iii) requires when a provider enters into a pre-dispute arbitration agreement that the consumer had previously entered into with another entity and does not contain the provision required by proposed § 1040.4(a)(2)(i) or the alternative permitted by proposed § 1040.4(a)(2)(ii). The proposed comment would explain that such a situation could arise where Bank A is acquiring Bank B after the compliance date, and Bank B had entered into pre-dispute arbitration agreements before the compliance date. The proposed comment would state that if, as part of the acquisition, Bank A acquires products of Bank B's that are subject to pre-dispute arbitration agreements (and thereby enters into such agreements), proposed § 1040.4(a)(2)(iii) would require Bank A to either (1) ensure the account agreements are amended to contain the provision required by proposed § 1040.4(a)(2)(iii)(A), or (2) deliver the notice in accordance with proposed § 1040.4(a)(2)(iii)(B).

Proposed comment 4(a)(2)–3 would state that providers that elect to deliver a notice in accordance with proposed § 1040.4(a)(2)(iii) may provide the notice in any way the provider communicates with the consumer, including electronically. The proposed comment would further explain that the notice may be provided either as a standalone document or included in another notice that the customer receives, such as a periodic statement to the extent permitted by other laws and regulations. The Bureau believes that permitting providers a wide range of options for furnishing the notice would accomplish the goal of consumer understanding while affording providers flexibility, thereby reducing the burden on providers.

The Bureau seeks comment on proposed comments 4(a)(2)–1, –2, and –3. The Bureau also seeks comment on whether proposed comment 4(a)(2)–3's explanation that the notice permitted by proposed § 1040.4(a)(3) may be provided in any way the provider typically communicates with the consumer, including electronically, provides adequate clarification to providers while helping ensure that consumers receive the notice.

4(b) Submission of Arbitral Records

While proposed § 1040.4(a) would prevent providers from relying on pre-dispute arbitration agreements in class actions, it would not prohibit covered entities from maintaining pre-dispute arbitration agreements in consumer contracts generally. Providers could still invoke such agreements to compel arbitration in cases not filed as class actions. Thus, the Bureau has separately considered whether regulatory interventions pertaining to these "individual" arbitrations would be in the public interest and for the protection of consumers, as well as whether the findings for such interventions are consistent with the Bureau's Study.

For reasons discussed more fully in Part VI and pursuant to its authority under section 1028(b), the Bureau proposes § 1040.4(b), which would mandate the submission of certain arbitral records to the Bureau. Proposed § 1040.4(b)(1) would require, for any pre-dispute arbitration agreement entered into after the compliance date, providers to submit copies of specified arbitration records enumerated in proposed § 1040.4(b)(1) to the Bureau, in the form and manner specified by the Bureau. As with all the requirements in this proposed rule, compliance with this provision would be required beginning on the compliance date. The Bureau would develop, implement, and publicize an electronic submission process that would be operational before this date, were proposed § 1040.4(b) to be adopted.

Proposed § 1040.4(b)(2) would require that providers submit any record required pursuant to proposed § 1040.4(b)(1) within 60 days of filing by the provider of any such record with the arbitration administrator and within 60 days of receipt by the provider of any such record filed or sent by someone other than the provider, such as the arbitration administrator or the consumer. Proposed § 1040.4(b)(3) would set forth the information that providers shall redact before submitting records to the Bureau. Proposed § 1040.4(b)(1) through (3) are discussed in greater detail below.

The Bureau notes that proposed § 1040.4(b) would require submission only of records arising from arbitrations pursuant to pre-dispute arbitration agreements entered into after the compliance date where one or more of the parties is a provider and the dispute concerns a product covered by the rule. The Bureau further notes that the provision would apply to both individual arbitration proceedings and class arbitration proceedings. If providers participate in arbitrations as the result of agreements with consumers to arbitrate that are not made until after a dispute has arisen, proposed § 1040.4(b) would not require submission of such records. Proposed § 1040.4(b) further would provide that copies of records should be submitted, to ensure that providers do not submit original documents.

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[517] The Bureau has previously recognized that requiring such determinations across an entire portfolio of collection accounts may be burdensome for buyers of medical debt because whether such debts constitute credit will turn on facts and circumstances that are unique to the health care context and of which the debt buyer may not be aware. As a result, the Bureau exempted medical debt from revenue that must be counted toward larger participant status of a debt collector. *See* Debt Collection Larger Participant Final Rule, 77 FR 65775, 65780 (Oct. 31, 2012).

[518] *See* proposed § 1040.4(a)(2) ("Upon *entering into* a pre-dispute arbitration agreement for a product or service covered by proposed § 1040.3 after the date set forth in § 1040.5(a) . . ." (emphasis added).

[519] *See* proposed comment 4–1.i (providing examples of entering into a pre-dispute arbitration agreement).

As noted above, the Bureau proposes § 1040.4(b) pursuant to its authority under Dodd-Frank sections 1028(b) and 1022(c)(4). Section 1022(c)(4) authorizes the Bureau to "gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers." The Bureau notes that it is not proposing to obtain information in this rule for the purpose of gathering or analyzing the personally identifiable financial information of consumers. Proposed § 1040.4(b)(3) would require providers to redact information that could directly identify consumers.[520]

As discussed above, the Bureau is not now proposing to ban pre-dispute arbitration agreements entirely, nor is it proposing to prohibit specific practices in individual arbitration other than the use of pre-dispute arbitration agreements to block class actions. Nevertheless, the Bureau will continue to evaluate the impacts on consumers of arbitration and arbitration agreements. To the extent necessary and appropriate, the Bureau intends to draw upon all of its statutorily authorized tools to address conduct that harms consumers. Specifically, the Bureau will continually analyze all available sources of information, including, if the proposed rule is finalized, information submitted to the Bureau pursuant to proposed § 1040.4(b) as well as other information garnered through its supervisory, enforcement, and market monitoring activities. The Bureau will draw upon these sources to assess trends pertinent to its statutory mission, including trends in the use of arbitration agreements; the terms of such agreements; and the procedures, conduct, and results of arbitrations.

Among other regulatory tools, the Bureau may consider conducting additional studies on consumer arbitration pursuant to Dodd-Frank section 1028(a) for the purpose of evaluating whether further rulemaking would be in the public interest and for the protection of consumers; improving its consumer education tools; or, where appropriate, undertaking enforcement or supervisory actions.[521]

The Bureau notes that the question of whether the use of individual arbitration in consumer finance cases is in the public interest and for the protection of consumers is discrete from the question of whether some covered persons are engaged in unfair, deceptive, or abusive acts or practices in connection with their individual arbitration agreements. The Bureau intends to use its supervisory and enforcement authority as appropriate to evaluate whether specific practices in relation to arbitration—such as the use of particular provisions in agreements or particular arbitral procedures—constitute unfair, deceptive, or abusive acts and practices pursuant to Dodd-Frank section 1031. The Bureau will pay particular attention to any provisions in arbitration agreements that might function in such a way as to deprive consumers of their ability to pursue their claims in arbitration. For example, in certain circumstances, an agreement that requires consumers to resolve disputes, in arbitration or otherwise, in person in a particular location regardless of the consumer's location could violate Dodd-Frank section 1031. In certain circumstances, requiring consumers to resolve claims in a systematically biased forum or before a biased decision-maker, in a forum that does not exist, or in a forum that does not have a procedure to allow a consumer to bring a claim could similarly violate Dodd-Frank section 1031. The Bureau is actively monitoring the use of such practices that may function in such a way as to deprive consumers of their ability to pursue their claims in arbitration and will continue to evaluate them in accordance with all applicable law and the full extent of the Bureau's authorities.

Consumer advocates and some other stakeholders have expressed concern that a proposal under consideration similar to proposed § 1040.4(b) that the Bureau described in its SBREFA Outline would allow the Bureau to monitor certain arbitration trends, but not to monitor or quantify the claims that consumers may have been deterred from filing because of the existence of a pre-dispute arbitration agreement. In particular, consumer advocates and some other stakeholders have expressed concern that pre-dispute arbitration agreements discourage consumers from filing claims in court or in arbitration and discourage attorneys from representing consumers in such proceedings. Consumer attorneys have noted, for example, that arbitration does not allow them to file cases that can develop the law (because the outcomes are usually private and do not have precedential effect) and, thus, they are wary of expending limited resources.[522] The Bureau acknowledges that its proposal would provide limited insight into how and whether arbitration agreements discourage filing of claims, but it nonetheless seeks comment on whether the proposed collection of the arbitral records specified in proposed § 1040.4(b) would permit the Bureau—and the public, to the extent the Bureau publishes the records (discussed below)—to monitor arbitration and detect practices that harm consumers.

Proposed comment 4(b)–1 would clarify that, to comply with the submission requirement in proposed § 1040.4(b), providers would not be required to submit the records themselves if they arranged for another person, such as an arbitration administrator or an agent of the provider, to submit the records on the providers' behalf. Proposed comment 4(b)–1 would also make clear, however, that the obligation to comply with proposed § 1040.4(b) nevertheless remains on the provider and, thus, the provider must ensure that such person submits the records in accordance with proposed § 1040.4(b). This proposed comment anticipates that arbitration administrators may choose to provide this service to providers.

The Bureau seeks comment on its approach to arbitration agreements generally and all aspects of its proposal to collect certain arbitral records. The Bureau further seeks comment on known and potential consumer harms in individual arbitration. In particular, it seeks comment on whether it should consider fewer, more, or different restrictions on individual arbitration, whether it should prohibit individual arbitration altogether and whether it has accurately assessed the harm to consumers that occurs when covered entities include pre-dispute arbitration agreements. As for its proposal to collecting arbitral records, the Bureau seeks comment on whether doing so will further the Bureau's stated goal of monitoring potential harms in providers' use of arbitration agreements as well as the underlying legal claims. Further, the Bureau seeks comment on whether proposed comment 4(b)–1 provides adequate clarification regarding the fact that the proposed rule would allow third parties to fulfill companies' obligations under proposed § 1040.4(b). In addition, the Bureau seeks comment on its plan to make an electronic submission process operational before the compliance date, including what features of such a system would be useful to providers, their agents, or the general public.

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[520] Pursuant to Dodd-Frank section 1022(c)(4)(C), the Bureau may not obtain information under its section 1022(c)(4) authority "for the purpose of gathering or analyzing the personally identifiable financial information of consumers."

[521] The Bureau interprets section 1028 to allow it, as appropriate, to further study the use of pre-dispute arbitration agreements and, if appropriate, to promulgate rules that would prohibit or impose conditions or limitations on the use of a pre-dispute arbitration agreement or to amend any rule that it would finalize pursuant to this proposal.

[522] *See, e.g., Arbitration: Is It Fair When Forced?* Hearing before the S. Comm. on the Judiciary, 112th Cong. 177 (2011) (Prepared Statement of F. Paul Bland, Senior Attorney, Public Justice), at 81–82.

Publication of Arbitral Records

The Bureau intends to publish arbitral records collected pursuant to proposed § 1040.4(b)(1). The Bureau is considering whether to publish such records individually or in the form of aggregated data. Prior to publishing such records, the Bureau would ensure that they are redacted, or that the data is aggregated, in accordance with applicable law, including Dodd-Frank section 1022(c)(8), which requires the Bureau to "take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under [the Freedom of Information Act or the Privacy Act] . . . is not made public under this title."

The Bureau seeks comment on the publication of the records that would be required to be submitted by proposed § 1040.4(b)(1), including whether it should limit any publication based on consumer privacy concerns arising out of the publication of such records after their redaction pursuant to proposed § 1040.4(b)(3) or if providers would have other confidentiality concerns. In addition, the Bureau seeks comment on whether it should publish arbitral records individually or in the form of aggregated data.

The Bureau also seeks comment on whether there are alternatives to publication by the Bureau—such as publication by other entities—that would further the purposes of publication described above.

Small Business Review Panel

During the Small Business Review Panel process, the SERs expressed some concern about the indirect costs of requiring submission of arbitral claims and awards to the Bureau, such as whether the requirement might cause the cost of arbitration administration to increase and whether it might require companies to devote employee resources to redacting consumers' confidential information before submission. The SERs also expressed concern about the possibility of the Bureau publishing arbitral claims and awards (as was set forth in the SBREFA Outline) due to perceived risks to consumer privacy, impacts on their companies' reputation, and fear that publication of data regarding claims and awards might not present a representative picture of arbitration.

In response to these and other concerns raised by the SERs, the Panel recommended that the Bureau seek comment on whether the publication of claims and awards would present a representative picture of arbitration. The Panel also recommended that the Bureau continue to assess whether and by how much the proposal to require submission of arbitral records would increase the costs of arbitration including administrative fees or covered entities' time. In addition, the Panel recommended that the Bureau consider the privacy and reputational impacts of publishing claims and awards for both the businesses and consumers involved in the dispute. The Bureau appreciates the SERs' concern about privacy risks and has sought to mitigate these risks by proposing the redaction requirements in proposed § 1040.4(b)(3), described below. The Bureau understands the SERs' concerns that publishing certain arbitral records could affect companies' reputations or paint an unrepresentative picture of arbitration (for example, by publishing awards, but not settlements). However, the Bureau notes that published court opinions also have this effect (in that settlements are typically not public), and the Bureau is not aware of any distinctions specific to arbitration in this respect. The Bureau has considered several aspects of the costs of its proposed submission requirement in its Section 1022(b)(2) Analysis, below. However, the Bureau continues to assess each of these issues and believes public comment would assist the Bureau in its assessment. Consistent with the SERs' recommendation, the Bureau seeks comment on each of the above issues.

4(b)(1) Records To Be Submitted

As stated above, proposed § 1040.4(b) would require that, for any pre-dispute arbitration agreement entered into after the compliance date, providers submit a copy of the arbitration records specified by proposed § 1040.4(b)(1) to the Bureau, in the form and manner specified by the Bureau.[523] Proposed § 1040.4(b)(1) would list the arbitral records that providers would be required to submit to the Bureau. As with all the requirements in this proposed rule, compliance with this provision would be required for pre-dispute arbitration agreements entered into after the compliance date.

4(b)(1)(i)

Proposed § 1040.4(b)(1)(i) would require, in connection with any claim filed by or against the provider in arbitration pursuant to a pre-dispute arbitration agreement entered into after the compliance date, that providers submit (A) the initial claim form and any counterclaim; (B) the pre-dispute arbitration agreement filed with the arbitrator or administrator; (C) the judgment or award, if any, issued by the arbitrator or arbitration administrator; and (D) if an arbitrator or arbitration administrator refuses to administer or dismisses a claim due to the provider's failure to pay required filing or administrative fees, any communication the provider receives from the arbitrator or an arbitration administrator related to such a refusal.

Proposed § 1040.4(b)(1)(i)(A) would require providers to submit any initial claims filed in arbitration pursuant to a pre-dispute arbitration agreement and any counterclaims. By "initial claim," the Bureau means the filing that initiates the arbitration, such as the initial claim form or demand for arbitration. The Bureau believes that collecting claims would permit the Bureau to monitor arbitrations on an ongoing basis and identify trends in arbitration proceedings, such as changes in the frequency with which claims are filed, the subject matter of the claims, and who is filing the claims. Based on the Bureau's expertise in handling and monitoring consumer complaints as well as monitoring private litigation, the monitoring of claims would also help the Bureau identify business practices that harm consumers. The Bureau seeks comment on its proposal to require submission of claims. The Bureau also seeks comment on whether further clarification of the meaning of "claim," either in proposed § 1040.2 or in commentary, would be helpful to providers. In addition, the Bureau also seeks comment on whether it should collect the response by the opposing party, if any, in addition to the claim. The Bureau further seeks comment on whether providers would encounter other obstacles in complying with the proposed submission requirement and, if so, what those obstacles are.

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[523] The Bureau anticipates that it would separately provide technical details pertaining to the submission process.

Proposed § 1040.4(b)(1)(i)(B) would require providers to submit, in connection with any claim filed in arbitration by or against the provider, the pre-dispute arbitration agreement filed with the arbitrator or arbitration administrator. The Bureau notes that, due to concerns relating to burden on providers and the Bureau itself, the Bureau is not proposing to collect all pre-dispute arbitration agreements that are provided to consumers. Instead, it is proposing only to require submission in the event an arbitration filing occurs.[524] By collecting the pre-dispute arbitration agreement, the Bureau would be able to monitor the impact that particular clauses in the agreement have on the conduct of an arbitration. For example, collecting pre-dispute arbitration agreements pursuant to which arbitrations were filed—combined with collecting judgments and awards pursuant to proposed § 1040.4(b)(1)(i)(C)—may permit the Bureau to gather information about whether clauses specifying that the parties waive certain substantive rights when pursuing the claim in arbitration affect outcomes in arbitration. The Bureau seeks comment on its proposal to require submission of pre-dispute arbitration agreements when arbitration claims are filed.

Proposed § 1040.4(b)(1)(i)(C) would require providers to submit the judgment or award, if any, issued by the arbitrator or arbitration administrator in an arbitration subject to proposed § 1040.4(b). This proposed requirement would be intended to reach only awards issued by an arbitrator that resolve an arbitration and not settlement agreements where they are not incorporated into an award. The Bureau believes that the proposed submission of these awards would aid the Bureau in its ongoing review of arbitration and help the Bureau assess whether arbitrations are being conducted fairly and without bias. The Bureau seeks comment on this aspect of the proposal and on whether it should consider requiring the submission of records that are not awards but that also close arbitration files.

Proposed § 1040.4(b)(1)(i)(D) would apply where an arbitrator or arbitration administrator refuses to administer or dismisses a claim due to the provider's failure to pay required filing or administrative fees. If this occurs, proposed § 1040.4(b)(1)(i)(D) would require the provider to submit any communication the provider receives from the arbitration administrator related to such a refusal or dismissal. With regard to communications relating to nonpayment of fees, the Bureau understands that arbitrators or administrators, as the case may be, typically refuse to administer an arbitration proceeding if filing or administrative fees are not paid. The Bureau understands that arbitrators or administrators will typically send a letter to the parties indicating that the arbitration has been suspended due to nonpayment of fees.[525] Pre-dispute arbitration agreements often mandate that the provider, rather than the consumer, pay some of the consumer's arbitration fees.[526]

Where providers successfully move to compel a case to arbitration (and obtain its dismissal in court), but then fail to pay the arbitration fees, consumers may be left unable to pursue their claims. The Study identified at least 50 instances of such non-payment of fees by companies in cases filed by consumers.[527] The Bureau is proposing § 1040.4(b)(1)(i)(D) to permit it to monitor non-payment of fees by providers whose consumer contracts include pre-dispute arbitration agreements and whether particular entities appear to be not paying fees as part of a tactical effort to avoid arbitration, which essentially forecloses a consumer's ability to bring a claim if the claim is governed by a pre-dispute arbitration agreement. The Bureau further expects that requiring submission of communications related to non-payment of fees would discourage providers from engaging in such activity.

Proposed § 1040.4(b)(1)(i)(D) would require providers to submit communications from arbitration administrators related to the dismissal or refusal to administer a claim for nonpayment of fees even when such nonpayment is the result of a settlement between the provider and the consumer. The Bureau believes this requirement would prevent providers who are engaging in strategic non-payment of arbitration fees to claim, in bad faith, ongoing settlement talks to avoid the disclosure to the Bureau of communications regarding their non-payment. The Bureau anticipates that companies submitting communications pursuant to proposed § 1040.4(b)(1)(i)(D) could indicate in their submission that nonpayment resulted from settlement and not from a tactical maneuver to prevent a consumer from pursuing the consumer's claim. Further, as stated above in the discussion of proposed § 1040.4(b)(1)(i)(C), the Bureau would not be requiring submission of the underlying settlement agreement or notification that a settlement has occurred.

The Bureau seeks comment on proposed § 1040.4(b)(1)(D). In addition, the Bureau seeks comment on the submission of communications from arbitration administrators related to the dismissal or refusal to administer a claim for nonpayment of fees even when such nonpayment is the result of a settlement between the provider and the consumer, including whether doing so would serve the policy goal of discouraging non-payment of arbitral fees by providers. The Bureau also seeks comment on the impact such a requirement would have on providers.

4(b)(1)(ii)

Proposed § 1040.4(b)(1)(ii) would require providers to submit to the Bureau any communication the provider receives from an arbitrator or arbitration administrator related to a determination that a provider's pre-dispute arbitration agreement that is entered into after the compliance date for a consumer financial product or service covered by proposed § 1040.3 does not comply with the administrator's fairness principles, rules, or similar requirements, if such a determination occurs. The Bureau is concerned about providers' use of arbitration agreements that may violate arbitration administrators' fairness principles or rules. Several of the leading arbitration administrators maintain fairness principles or rules, which the administrators use to assess the fairness of the company's pre-dispute arbitration agreement.[528] These administrators may refuse to hear an arbitration if the company's arbitration agreement does not comply with the relevant principles or rules.[529] Some administrators will also review a company's agreement preemptively—before an arbitration claim has been filed—to determine if the agreement complies with the relevant principles or rules.[530]

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[524] Pursuant to Regulation Z, credit card issuers are already required to submit their consumer agreements to the Bureau (although the Bureau has temporarily suspended this requirement). *See* 12 CFR 1026.58. The Bureau has also proposed to collect prepaid account agreements. Prepaid NPRM, *supra* note 470.

[525] *See* AAA, *Consumer Arbitration Rules, supra* note 130 at 32; JAMS, *Streamlined Arbitration Rules and Procedures, supra* note 132 at 9 (effective July 1, 2014).

[526] Study, *supra* note 2, section 5 at 58.

[527] Study, *supra* note 2, section 5 at 66 n.110. The Bureau has similarly received consumer complaints involving entities' alleged failure to pay arbitral fees.

[528] *See* AAA *Consumer Due Process Protocol,* supra note 131; JAMS, *Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness* (effective July 15, 2009), *available at http://www.jamsadr.com/files/Uploads/Documents/JAMS-Rules/JAMS_Consumer_Min_Stds-2009.pdf* (hereinafter JAMS Minimum Standards of Procedural Fairness).

The Bureau believes that requiring submission of communications from administrators concerning agreements that do not comply with arbitration administrators' fairness principles or rules would allow the Bureau to monitor which providers could be attempting to harm consumers or discourage the filing of claims in arbitration by mandating that disputes be resolved through unfair pre-dispute arbitration agreements. The Bureau also believes that requiring submission of such communications could further discourage covered entities from inserting pre-dispute arbitration agreements in consumer contracts that do not meet arbitrator fairness principles. The Bureau notes that, pursuant to proposed § 1040.4(b)(1)(ii), communications that the provider receives would include communications sent directly to the provider as well as those sent to a consumer or a third party where the provider receives a copy.

Proposed comment 4(b)(1)(ii)–1 would clarify that, in contrast to the other records the Bureau proposes to collect under proposed § 1040.4(b)(1), proposed § 1040.4(b)(1)(ii) would require the submission of communications both when the determination occurs in connection with the filing of a claim in arbitration as well as when it occurs if no claim has been filed. Proposed comment 4(b)(1)(ii)–1 would state further that, if such a determination occurs with respect to a pre-dispute arbitration agreement that the provider does not enter into with a consumer, submission of any communication related to that determination is not required. The Bureau understands that providers may submit pre-dispute arbitration agreements to administrators, which review such agreements for compliance with rules even where an arbitral claim has not been filed.[531] The proposed comment would state that, if the provider submits a prototype pre-dispute arbitration agreement for review by the arbitration administrator and never actually includes it in any consumer agreements, the pre-dispute arbitration agreement would not be entered into and thus submission to the Bureau of communication related to a determination made by the administrator concerning the pre-dispute arbitration agreement would not be required. The Bureau believes that this clarification is needed to avoid discouraging providers from submitting prototype pre-dispute arbitration agreements to administrators for their review.

Proposed comment 4(b)(1)(ii)–2 would clarify that what constitutes an administrator's fairness principles or rules pursuant to proposed § 1040.4(b)(ii)(B) should be interpreted broadly. That comment would further provide current examples of such principles or rules, including the AAA's Consumer Due Process Protocol and the JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness.[532]

The Bureau seeks comment on proposed § 1040.4(b)(1)(ii)(B) and proposed comments 4(b)(1)(ii)(B)–1 and –2. The Bureau also seeks comment on whether these provisions would encourage providers to comply with their arbitration administrators' fairness principles or rules. In addition, the Bureau seeks comment on whether there are other examples of fairness principles the Bureau should list or concerns regarding the principles that the Bureau has proposed to list as examples.

4(b)(2) Deadline for Submission

Proposed § 1040.4(b)(2) would state that a provider shall submit any record required by proposed § 1040.4(b)(1) within 60 days of filing by the provider of any such record with the arbitration administrator and within 60 days of receipt by the provider of any such record filed or sent by someone other than the provider, such as the arbitration administrator or the consumer. The Bureau proposes a 60-day period for submitting records to the Bureau to allow providers a sufficient amount of time to comply with these requirements. The Bureau proposes what it believes is a relatively lengthy deadline because it expects that providers will continue to face arbitrations infrequently,[533] and, as a result, may be relatively unfamiliar with the requirements of proposed § 1040.4(b).

The Bureau also notes that, as proposed comment 4(b)–1 indicates, providers would comply with proposed § 1040.4(b) if another person, such as an arbitration administrator, submits the specified records directly to the Bureau on the provider's behalf, although the provider would be responsible for ensuring that the person submits the records in accordance with proposed § 1040.4(b).

This proposed 60-day period is consistent with feedback the Bureau received from the SERs during the Small Business Review panel process who expressed concern that a short deadline might burden companies given the relative infrequency of arbitration and, thus, their potential unfamiliarity with this particular requirement. The Bureau seeks comment on whether 60 days would be a sufficient period for providers to comply with the requirements of proposed § 1040.4(b).

4(b)(3) Redaction

Proposed § 1040.4(b)(3) would require providers to redact certain specific types of information that can be used to directly identify consumers before submitting arbitral records to the Bureau pursuant to proposed § 1040.4(b)(1). The Bureau endeavors to protect the privacy of consumer information. Additionally, as discussed more fully above, the Bureau proposes § 1040.4(b), in part, pursuant to its authority under Dodd-Frank section 1022(c)(4), which provides that the Bureau may not obtain information "for the purpose of gathering or analyzing the personally identifiable financial information of consumers." The Bureau has no intention of gathering or analyzing information that directly identifies consumers. At the same time, the Bureau seeks to minimize the burden on providers by providing clear instructions for redaction.

Accordingly, the Bureau proposes § 1040.4(b)(3), which would require that providers, before submitting arbitral records to the Bureau pursuant to proposed § 1040.4(b), redact nine specific types of information that directly identify consumers. The Bureau believes that these nine items would be easy for providers to identify and, therefore, that redacting them would impose minimal burden on providers. Proposed comment 4(b)(3)–1 would clarify that providers are not required to perform the redactions themselves and may assign that responsibility to another entity, such as an arbitration administrator or an agent of the provider.

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[529] *See AAA Consumer Arbitration Rules*, *supra* note 130, at 10; JAMS Streamlined Arbitration Rules and Procedures, *supra* note 132, at 6.

[530] *See AAA Consumer Arbitration Rules*, *supra* note 130, at 16.

[531] Beginning September 1, 2014, a business that intends to provide the AAA as a potential arbitrator in a consumer contract must notify the AAA at least 30 days before the planned effective date of the contract and provide a copy of the arbitration agreement to the AAA. AAA *Consumer Arbitration Rules*, *supra* note 130 at 16.

[532] AAA Consumer Due Process Protocol, *supra* note 131; JAMS Minimum Standards for Procedural Fairness, *supra* note 528. The Bureau notes that it would be offering these specific principles or rules merely to assist providers with compliance; this comment does not represent an endorsement by the Bureau of these specific principles or rules.

[533] *See* Study, supra note 2, section 5 at 20 (stating that, from 2010 to 2012, 1,847 individual AAA cases, or about 616 per year, were filed for six consumer financial product markets).

Pursuant to proposed § 1040.4(b)(3)(i) through (v), the Bureau would require providers to redact names of individuals, except for the name of the provider or arbitrator where either is an individual; addresses of individuals, excluding city, State, and zip code; email addresses of individuals; telephone numbers of individuals; and photographs of individuals from any arbitral records submitted to the Bureau. The Bureau notes that, with the exception of the names of providers or arbitrators where either are individuals, information related to *any* individuals—not merely the consumer to whom the consumer financial product is offered or provided—would be required to be redacted pursuant to proposed § 1040.4(b)(3)(i) through (v). This would include names or other items of information relating to third-party individuals, such as individual employees of the provider.

Proposed § 1040.4(b)(3)(ii) would require redaction of street addresses of individuals, but not city, State, and zip code. The Bureau believes that collecting such high-level location information for arbitral records could, among other things, help the Bureau match the consumer's location to the arbitral forum's location in order to monitor issues such as whether consumers are being required to arbitrate in remote fora, and assist the Bureau in identifying any local or regional patterns in consumer harm as well as arbitration activity. The Bureau believes that collecting city, State, and zip code would pose limited privacy risk and that any residual risk would be balanced by the benefit derived from collecting this information.

Proposed § 1040.4(b)(3)(vi) through (ix) would require redaction from any arbitral records submitted to the Bureau, of account numbers; social security and tax identification numbers; driver's license and other government identification numbers; and passport numbers. These redaction requirements would not be limited to information for individual persons because the Bureau believes that the privacy of any account numbers, social security, or tax identification numbers should be maintained, to the extent they may be included in arbitral records.

The Bureau notes that it is not broadly proposing to require providers to redact all types of information that could be deemed to be personally identifiable financial information (PIFI). Because Federal law prescribes an open-ended definition of PIFI,[534] the Bureau believes that broadly requiring redaction of all PIFI could impose a significant burden on providers while affording few, if any, additional protections for consumers relative to the redactions the Bureau is proposing to require. As such, the list of items in proposed § 1040.4(b)(3)(i) through (ix) identifies the examples of PIFI that the Bureau anticipates are likely to exist in the arbitral records that would be submitted under § 1040.4(b)(1). The Bureau's preliminary view is that the list of items strikes the appropriate balance between protecting consumer privacy and imposing a reasonable redaction burden on providers.

The Bureau seeks comment on its approach of requiring these redactions and on the burden to providers of this redaction requirement. The Bureau also seeks comment on whether it should require redaction of a consumer's city, State, and zip code, in addition to the consumer's street address. In addition, the Bureau seeks comment on whether it should require redaction of any additional types of consumer information, including other types of information that may be considered PIFI and that are likely to be present in the arbitral records. The Bureau further seeks comment on whether any of the items described in proposed § 1040.4(b)(3)(i) through (ix), such as "account number," should be further defined or clarified. Finally, the Bureau also seeks comment on whether the scope of any of the items should be expanded; for example, whether "passport number" should be expanded to include the entire passport.

Section 1040.5 Compliance Date and Temporary Exception

Proposed § 1040.5 would set forth the compliance date for part 1040 as well as a limited and temporary exception to compliance with proposed § 1040.4(a)(2) for certain consumer financial products and services.

5(a) Compliance Date

Dodd-Frank section 1028(d) provides that any regulation prescribed by the Bureau under section 1028(b) shall apply to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation, as established by the Bureau. The Bureau interprets the statutory language "shall apply to any agreement . . . entered into after the end of the 180-day period beginning on the effective date" to mean that the proposed rule may apply beginning on the 181st day after the effective date, as this day would be the first day "after the end of the 180-day period beginning on the effective date of the regulation." The Bureau proposes that the proposed rule establish an effective date of 30 days after publication of a final rule in the **Federal Register**. Were this 30-day period finalized, the requirements of the proposed rule would apply beginning on the 211th day after publication of the rule in the **Federal Register**.

The Bureau believes that stating in the regulatory text the specific date on which the rule would begin to apply and adopting a user-friendly term such as "compliance date" for this date would improve understanding among providers of their obligations, and consumers of their rights, under the rule. As such, proposed § 1040.5(a) would state that compliance with this part is required for any pre-dispute arbitration agreement entered into after the date that is 211 days after publication of the rule in the **Federal Register**; the Bureau would instruct the Office of the Federal Register to insert a specific date upon publication in the **Federal Register**. Proposed § 1040.5(a) would also adopt the term "compliance date" to refer to this date. As discussed above, the Bureau is proposing commentary to proposed § 1040.4. Specifically, proposed comment 4–1 which would provide examples of when a provider does and does not "enter into" an agreement after the compliance date.

The Bureau expects that most providers, with the exception of providers that would be covered by proposed § 1040.5(b), discussed below, would be able to comply with proposed § 1040.4(a)(2) by the 211th day after publication of a final rule. Typically, contracts that contain pre-dispute arbitration agreements are standalone documents provided in hard copy or electronic form. These contracts are provided to the consumer at the time of contracting by either the provider or a third party (for example, a grocery store where a consumer can send remittances through a remittance transfer provider). The Bureau believes that, for all providers—except those that would be covered by the temporary exception in proposed § 1040.5(b)—a 211-day period would give providers sufficient time to revise their agreements to comply with proposed § 1040.4(a)(2) (and to make any other changes required by the rule) and would give providers using hard-copy agreements sufficient time to print new copies and, to the extent necessary, deliver them to the needed locations. The Bureau anticipates that providers could continue to provide non-compliant hard-copy agreements as long as they simultaneously gave consumers a notice or amendment including the required provision as part of the agreement.

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[534] Personally identifiable financial information is defined in 12 CFR 1016.3(q)(1).

As noted above, the Bureau proposes a 30-day effective date. The Bureau has chosen 30 days based on the Administrative Procedure Act, which requires that, with certain enumerated exceptions, a substantive rule be published in the **Federal Register** not less than 30 days before its effective date.[535] In the Bureau's view, a longer period before the effective date would not be needed to facilitate compliance, given that Dodd-Frank section 1028(d) mandates an additional 180-day period between the effective date and the compliance date. For the reasons discussed above, the Bureau believes that a 211-day period between **Federal Register** publication and the compliance date would afford most providers—with the exception of providers that would covered by proposed § 1040.5(b)—sufficient time to comply. The Bureau reiterates that this 211-day period includes the effective date; thus, by virtue of setting this effective date, no additional time would be added to this 211-day period.

The Bureau seeks comment on whether a different formulation would provide greater clarity to providers and consumers as to when the rule's requirements would begin to apply. In addition, the Bureau seeks comment on whether a period of 211 days between publication of a final rule in the **Federal Register** and the rule's compliance date constitutes sufficient time for providers to comply with proposed § 1040.4(a)(2) and, if not, what an appropriate effective date should be.[536]

5(b) Exception for Pre-Packaged General-Purpose Reloadable Prepaid Card Agreements

As described above in the Section-by-Section Analysis to proposed § 1040.5(a), that provision would specify the rule's compliance date—the date on which the rule's requirements would begin to apply—and that such date would be 211 days after publication of a final rule in the **Federal Register**. Starting on this date, providers would, among other things, be required to ensure that the pre-dispute arbitration agreement contains the provision required by proposed § 1040.4(a)(2)(i) or an alternative provision permitted by proposed § 1040.4(a)(2)(ii). As described above, the Bureau expects that most providers would be able to comply with proposed § 1040.4(a)(2)(i) or (ii) by the 211th day after publication of a final rule.

However, for certain products, there may be additional factors that would make compliance by the 211th day challenging. The Bureau has concerns about whether providers of certain types of prepaid cards would be able to ensure that only compliant products are offered for sale or provided to consumers after the compliance date. Prepaid cards are typically sold in an enclosed package that contains a card and a cardholder agreement. These packages are typically printed well in advance of sale and are distributed to consumers through third-party retailers such as drugstores, check cashing stores, and convenience stores.[537] As a result, to comply with the rule by the compliance date, providers would need to search each retail location at which their products are sold for any non-compliant packages; remove them from the shelves; and print new packages, which could likely incur considerable expense. The Bureau believes that this represents a unique situation not present with other products and services that would be covered by proposed Part 1040.

For these reasons, proposed § 1040.5(b) would establish a limited exception from proposed § 1040.4(a)(2)'s requirement that the provider's pre-dispute arbitration agreement contain the specified provision by the compliance date. Proposed § 1040.5(b) would state that proposed § 1040.4(a)(2) shall not apply to a provider that enters into a pre-dispute arbitration agreement for a general-purpose reloadable prepaid card if certain conditions are met. For a provider that cannot contact the consumer in writing, proposed § 1040.5(b)(1) would set forth the following requirements: (1) The consumer acquires the card in person at a retail store; (2) the agreement was inside of packaging material when it was acquired; and (3) the agreement was packaged prior to the compliance date of the rule. For a provider that has the ability to contact the consumer in writing, proposed § 1040.5(b)(2) would require that the provider meet all of the requirements specified in proposed § 1040.5(b)(1) as well as one additional requirement; within 30 days of obtaining the consumer's contact information, the provider notifies the consumer in writing that the pre-dispute arbitration agreement complies with the requirements of proposed § 1040(a)(2) by providing an amended pre-dispute arbitration agreement to the consumer.

In the Bureau's view, this exception would permit prepaid card providers to avoid the considerable expense of pulling and replacing packages at retail stores while adequately informing consumers of their dispute resolution rights, where feasible, due to the notification requirement in proposed § 1040.5(b)(2). The Bureau notes that proposed § 1040.5(b)(2) would not impose on providers an obligation to obtain a consumer's contact information. Where providers *are* able to contact the consumer in writing, the Bureau expects that they could satisfy proposed § 1040.5(b)(2) by, for example, sending the compliant agreement to the consumer when the consumer calls to register the account and provides a mailing address or email address; sending the revised terms when the provider sends a personally-embossed card to the consumer; or communicating the new terms on the provider's Web site.

Proposed comment 5(b)(2)–1 would clarify that the 30-day period would not begin to elapse until the provider is able to contact the consumer. Proposed comment 5(b)(4)–1 would also provide illustrative examples of situations where the provider has the ability to contact the consumer, including when the provider obtains the consumer's mailing address or email address.

Importantly, providers who avail themselves of the exception in proposed § 1040.5(b) would still be required to comply with proposed § 1040.4(a)(1) and proposed § 1040.4(b) as of the compliance date. As such, providers who avail themselves of this exception would still be prohibited, as of the compliance date, from relying on a pre-dispute arbitration agreement entered into after the compliance date with respect to any aspect of a class action concerning any of the consumer financial products or services covered by proposed § 1040.3, pursuant to proposed § 1040.4(a)(1). The amended pre-dispute arbitration agreement submitted by providers in accordance with proposed § 1040.5(b)(4) would be required to include the provision required by proposed § 1040.4(a)(2)(i) or the alternative permitted by proposed § 1040.4(a)(2)(ii). And providers would also still be required to submit certain arbitral records to the Bureau, pursuant to proposed § 1040.4(b), in connection with pre-dispute arbitration agreements entered into after the compliance date. Further, the Bureau does not anticipate that permitting prepaid providers to sell existing card stock containing non-compliant agreements would affect consumers' shopping behavior, as, currently, consumers are typically unable to review the enclosed terms and conditions before purchasing a prepaid product in any event (although the Bureau would expect that corresponding product Web sites would contain an accurate arbitration agreement).

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[535] 5 U.S.C. 553(d).

[536] The Bureau notes that if an electronic submission system is not ready by the effective date, the Bureau may consider delaying the effective date of proposed § 1040.4(b).

[537] *See* Prepaid NPRM, *supra* note 470, at 77106–07.

The Bureau seeks comment on whether the temporary exception in proposed § 1040.5(b) is needed, and, if so, on the exception as proposed. While the Bureau believes that the term "general-purpose-reloadable prepaid card" has an accepted meaning, the Bureau seeks comment on whether a definition of this term or additional clarification regarding its meaning would be helpful to providers. Additionally, the Bureau seeks comment on whether the exception should use a different term describing prepaid products. The Bureau also seeks comment on whether the proposed exception should be available to providers of other products—instead of, or in addition to, prepaid products—or whether the exception's coverage should not be limited based on product type, but based on other criteria.

The Bureau also seeks comment on whether requiring providers who take advantage of the exception in proposed § 1040.5(b) to make available a compliant pre-dispute arbitration agreement within 30 days after the provider becomes aware that the agreement has been provided to the consumer would be a feasible process for providers while also adequately protecting consumers. Further, the Bureau seeks comment on whether alternatives to the proposed exception would better accomplish the objectives of furthering consumer awareness of their dispute resolution rights and ensuring consumers receive accurate disclosures without imposing excessive costs on providers. One alternative, for example, could be for the Bureau to prohibit providers from selling non-compliant agreements after the compliance date, except for agreements that were printed prior to a specified number of days (such as 90 or 120 days) before the compliance date.

VIII. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

In developing this proposed rule, the Bureau has considered the potential benefits, costs, and impacts required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons (which in this case would be the providers subject to the proposed rule), including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas.

The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts of the proposed rule. The Bureau has consulted, or offered to consult with, the prudential regulators, the Federal Housing Finance Agency, the Federal Trade Commission, the U.S. Department of Agriculture, the U.S. Department of Housing and Urban Development, the U.S. Department of the Treasury, the U.S. Department of Veterans Affairs, the U.S. Commodities Futures Trading Commission, the U.S. Securities and Exchange Commission, and the Federal Communications Commission including consultation regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The Bureau has chosen to consider the benefits, costs, and impacts of the proposed provisions as compared to the status quo in which some, but not all, consumer financial products or services providers in the affected markets (see proposed § 1040.2(c), defining the entities covered by this rule as "providers") use arbitration agreements.[538] The baseline considers economic attributes of the relevant markets and the existing legal and regulatory structures applicable to providers. The Bureau seeks comment on this baseline.

The Bureau invites comment on all aspects of the data that it has used to analyze the potential benefits, costs, and impacts of the proposed provisions.[539] However, the Bureau notes that in some instances, the requisite data are not available or are quite limited. In particular, with the exception of estimating consumer recoveries from Federal class settlements, data with which to quantify the benefits of the proposed rule are especially limited. As a result, portions of this analysis rely in part on general economic principles and the Bureau's expertise in consumer financial markets to provide a qualitative discussion of the benefits, costs, and impacts of the proposed rule. The Bureau discusses and seeks comment on several alternatives, including ones that would be applicable to larger entities as well, in the Regulatory Flexibility Analysis below.

In this analysis, the Bureau focuses on the benefits, costs, and impacts of the main aspects of the proposed rule: (1) The requirement that providers with arbitration agreements include a provision in the arbitration agreements they enter into in the future stating that the arbitration agreement cannot be invoked in class litigation; and (2) the related prohibition that would forbid providers from invoking such an agreement in a case filed as a class action. Thus, given the baseline of the status quo, the analysis below focuses on providers that currently have arbitration agreements.

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[538] The Bureau has discretion in each rulemaking to choose the relevant provisions to discuss and to choose the most appropriate baseline for that particular rulemaking. A potential alternative baseline for this rulemaking is the baseline of a hypothetical future state of the world where "class actions against businesses would be all but eliminated." *See* Brian Fitzpatrick, *The End of Class Actions?*, 57 Ariz. L. Rev. 161 (2015). Such a baseline could be justified because the use of class-eliminating arbitration agreements may continue to grow over time. *See also* Myriam Gilles, *Opting Out of Liability: The Forthcoming, Near-Total Demise of the Modern Class Action*, 104 Mich. L. Rev. 373 (2005); Jean Sternlight, *As Mandatory Binding Arbitration Meets the Class Action, Will the Class Action Survive?*, 42 Wm. & Mary L. Rev. 1 (2000–2001). Indeed, in Section 2 of the Study, the Bureau documents a slight but gradual increase in the adoption of arbitration agreements by industry in particular markets. *See generally* Study, *supra* note 2, section 2. *See also* Peter Rutledge & Christopher Drahozal, *Sticky Arbitration Clauses—the Use of Arbitration Clauses after Concepcion and Amex*, 67 Vand. L. Rev. 955 (2014). The Bureau believes that this trend is likely to continue, but for simplicity and transparency, the Bureau assumes that, if the proposed rule is not finalized, the future prevalence of arbitration agreements would remain the same as the current prevalence. The estimated impact, both of benefits and costs, would be significantly larger if the Bureau had instead used the hypothetical future state of universal adoption of arbitration agreements as the baseline, because the baseline that the Bureau actually uses assumes that a significant amount of class litigation remains regardless of whether the proposed rule is finalized.

[539] The estimates in this analysis are based upon data obtained and statistical analyses performed by the Bureau. This includes much of the data underlying the Study and some of the Study's results. The collection of the data underlying the Study is described in the relevant sections and appendices of the Study. Some of the data was collected from easily accessible sources, such as the data underlying the Bureau's analysis of Federal class settlements. Other data is confidential, such as the data underlying the Bureau's analysis of the pass-through of costs of arbitration onto interest rates for large credit card issuers. The Bureau also collected additional information from trade groups on the prevalence of arbitration agreements used in markets that were not analyzed in Section 2 of the Study. The collection of data from trade groups is discussed further below in Part VIII and in Part IX.

The effect of the proposal on arbitration of individual disputes, both the indirect effect of the class provision discussed above and the direct effect of provisions that would require the reporting of certain arbitral records to the Bureau for monitoring purposes, is relatively minor. The Bureau is aware of only several hundred consumers participating in such disputes each year and the Bureau does not expect a sizable increase, regardless of whether the proposed rule is finalized.[540] If anything, the number of such disputes might decrease if the proposed rule results in some providers removing arbitration agreements altogether. As discussed below, there is no reliable evidence on whether this would occur.

Providers that currently use arbitration agreements can be divided into two categories. The first category is comprised of providers that currently include arbitration agreements in contracts they make with consumers. For these providers, which constitute the vast majority of providers using arbitration agreements, the Bureau believes that the proposed class rule would result in the change from virtually no exposure to class litigation to at least as much exposure as is currently faced by those providers with similar products or services that do not use arbitration agreements.

The second category includes providers that invoke arbitration agreements contained in consumers' contracts with another person. This category includes, for example, debt collectors and servicers who, when sued by a consumer, invoke an arbitration agreement contained in the original contract formed between the original provider and the consumer. For these providers, the additional class litigation exposure caused by the proposed rule would be somewhat less than the increase in exposure for providers of the first type because the providers in this second category are not currently uniformly able to rely on arbitration agreements in their current operations. For example, debt collectors typically collect both from consumers whose contracts with their original creditor contain arbitration agreements and from consumers whose contracts with their original creditor do not contain arbitration agreements. Thus, these debt collectors already face class litigation risk, but if the proposal were adopted, this risk would be increased, at most, in proportion to the fraction of the providers' consumers whose contracts contain arbitration agreements.[541] The actual magnitude by which debt collectors' risk would be increased would likely be lower because even when a consumer's contract contains an arbitration agreement today, the ability of the debt collector to rely upon it varies across arbitration agreements and depends on the applicable contract and background law.[542]

The analysis below applies to both types of providers. For additional clarity and to avoid unnecessary duplication, the discussion is generally framed in terms of the first type of provider (which faces virtually no exposure to class claims today), unless otherwise noted. The Bureau estimates below the number of additional Federal class actions and putative class proceedings that are not settled on a class basis for both types of provider.

Description of the Market Failure and Economic Framework

Before considering the benefits, costs, and impacts of the proposed provisions on consumers and covered persons, as required by Section 1022(b)(2), the Bureau believes it may be useful to provide the economic framework through which it is considering those factors in order to more fully inform the rulemaking, and in particular to describe the market failure that is the basis for the proposed rule.[543] The Bureau's economic framework assumes that when Congress and States have promulgated consumer protection laws that are applicable to consumer financial products and services ("the underlying laws") they have done so to address a range of market failures, for example asymmetric information. The underlying laws need enforcement mechanisms to ensure providers conform their behavior to these laws. In analyzing and proposing the class proposal, the Bureau is focusing on a related market failure: reduced incentives for providers to comply with the underlying laws. The reduced incentives for providers to comply are due to an insufficient level of private enforcement.

While the Bureau assumes that the underlying laws are addressing a range of market failures, it also recognizes that compliance with these underlying laws requires some costs. There are out-of-pocket costs required to, *e.g.,* distribute required disclosures or notices, investigate alleged errors, or resolve disputes. There are opportunity costs in, for example, forgoing adjustments in interest rates, limiting penalty fees, or limiting calling hours for debt collections. And, there are costs associated with establishing a compliance management system which, *e.g.,* trains and monitors employees, reviews communications with consumers, and evaluates new products or features.

The Bureau believes, based on its knowledge and expertise, that the current incentives to comply are weaker than the economically efficient levels. It further believes that conditions are such that this implies that the economic costs of increased compliance (due to the additional incentives provided by the proposed rule) are justified by the economic benefits of this increased compliance. If these conditions do not hold in particular cases, the increased compliance due to the proposed rule would likely lower economic welfare. The data and methodologies available to the Bureau do not allow for an economic analysis of these premises on a law-by-law basis.[544] However, for purposes of this discussion, the Bureau assumes that these conditions hold.

The Study shows that class litigation is currently the most effective private enforcement mechanism for most claims in markets for consumer financial products or services in providing monetary incentives (including forgone profits due to in-kind or injunctive relief) for providers to comply with the law.[545] During the years covered by the Study, providers paid out hundreds of millions of dollars per year in class relief and related litigation expenses in consumer finance cases.[546] Class actions

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[540] These numbers come from a single arbitration provider, the AAA, for several consumer finance markets. *See generally* Study, *supra* note 2, section 5. Based on the analysis of consumer financial contracts in Section 2 of the Study, it is likely that the AAA accounts for the majority of arbitrations in several large consumer financial markets (checking and credit cards, for example).

[541] For example, if half of consumers on whose debts a debt collector collects have arbitration agreements in their contracts, then the debt collector's class litigation risk would at most double if the proposed rule is finalized as proposed.

[542] *See* Study, *supra* note 2, section 6 at 54 n.94.

[543] Although section 1022(b)(2) does not require the Bureau to provide this background, the Bureau does so as a matter of discretion to more fully inform the rulemaking.

[544] The Bureau seeks comment and data that would allow further analysis of how to determine the point at which strengthening incentives might become inefficient.

[545] As discussed further below, if class litigation is generally meritless then it does not provide an incentive for providers to comply with the law.

[546] *See generally* Study, *supra* note 2, section 8. As discussed further below, with regard to

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also resulted in substantial but difficult to quantify prospective relief. This compares to the purely retrospective relief and other expenses related to about 1,000 individual lawsuits in Federal courts filed by consumers with respect to five of the largest consumer finance markets, a similar number of individual arbitrations, and a similar number of small claims court cases filed by consumers.[547] Individual consumer finance lawsuits filed in state courts (other than small claims courts) add some additional modest volume, but the Bureau does not believe that they change the magnitude of the differential between class and individual relief. In other words, the monetary incentives for providers to comply with the law due to the threat of class actions are substantially greater than those due to the threat of consumers bringing individual disputes against providers.

The relative efficacy of class litigation—as compared to individual dispute resolution, either in courts or in front of an arbitrator—in achieving these incentives is not surprising. As discussed in Part VI, the potential legal harm per consumer arising from violations of law by providers of consumer financial products or services is frequently low in monetary terms. Moreover, consumers are often unaware that they may have suffered legal harm. For any individual, the monetary compensation a consumer could receive if successful will often not be justified by the costs (including time) of engaging in any formal dispute resolution process even when a consumer strongly suspects that a legal harm might have occurred. This is confirmed by the Study's nationally representative survey of consumers.[548] In economic terms, these are negative-value legal claims (claims where costs of pursuing a remedy do not justify the potential rewards). When thousands or millions of consumers may have individual negative-value legal claims, class actions can provide a vehicle to combine these negative-value legal claims into a single lawsuit worth bringing.[549]

The Bureau's economic framework also takes into account other incentives that may cause providers to conform their conduct to the law; there are at least two other important mechanisms, which are both described here. The first incentive is the economic value for the provider to maintain a positive reputation with its customers, which will create an incentive to comply with the law to the extent such compliance is correlated with the provider's reputation. As the Study shows, many consumers might consider switching to a competitor if the consumer is not satisfied with a particular provider's performance.[550] In part in response to this and to other reputational incentives (including publicly accessible complaint databases), many providers have developed and administer internal dispute resolution mechanisms.[551] The second incentive is to avoid supervisory actions or public enforcement actions by Federal and state regulatory bodies, such as the Bureau. In response to this, many providers have developed compliance programs, particularly where they are subject to ongoing active supervision by Federal or state regulators.

However, economic theory suggests that these other incentives (including reputation and public enforcement) are insufficient to achieve optimal compliance (again, assuming that the current levels of compliance are below those that would be economically efficient),[552] and the Bureau's experience similarly confirms that these mechanisms do not completely solve the market failure that the class proposal would attempt to address. Given the Bureau's assumptions outlined above, economic theory suggests that any void left by weakening any one of these incentives will not be filled completely by the remaining incentives.

Reputation concerns will create the incentive for a firm to comply with the law only to the extent legally compliant or non-compliant conduct would be visible to consumers and affect the consumer's desire to keep doing business with the firm, and even then, with a lag.[553] Thus, there is an incentive for firms to underinvest in compliance because consumers will not notice the non-compliant conduct resulting from underinvestment for some time or may not view the non-compliant conduct as sufficient to affect the consumer's willingness to do business with the firm.[554]

Economic theory also suggests that regardless of whether relief is warranted under the law, the provider has a relatively strong incentive to correct issues only for the consumers who complain directly about particular practices to the provider—as those are the consumers for whom the provider's reputation is most at risk—and less of an incentive to correct the same issues for other consumers who do not raise them or who may be unaware that the practices are occurring. Accordingly, the providers' incentive to comply due to reputational concerns is, in part, driven by the fraction of consumers who could become aware of the issue. In addition, with such informal dispute resolution, correcting issues for a particular

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providing monetary incentives to increase investment in complying with the law, both relief to consumers and litigation expenses serve to increase the strength of deterrence incentives. *See* Richard Posner, *Economic Analysis of Law*, 8th ed. (2011) 785–92. In particular, effectively evoking the logic of Pigouvian taxes, he notes, "what is most important from an economic standpoint is that the violator be confronted with the costs of his violation—this preserves the deterrent effect of litigation—not that he pays them to his victims."

[547] *See* Study, *supra* note 2, section 1 at 11, 15–16. The Bureau could not quantify providers' spending on individual adjudications for a variety of reasons, most importantly that settlement terms of these cases are most often private.

[548] *See generally* Study, *supra* note 2, section 3. In particular, while being presented with a hypothetical situation of a clearly erroneous charge on their credit card bill that the provider is unwilling to remedy, 1.4 percent of consumers surveyed stated that they would seek legal advice or sue using an attorney, and 0.7 percent of consumers stated that they would seek legal remedies without mentioning an attorney. *Id.*, section 3 at 18.

[549] *See, e.g.*, Posner, *supra* note 546 at 785–92. *See also* Louis Kaplow & Steven Shavell, *Fairness versus Welfare*, 114 Harv. L. Rev. 961 (2001), at 1185 n. 531 ("[C]lass actions are valuable when they allow claims that would otherwise be brought individually to proceed jointly at lower cost due to the realization of economies of scale. In addition, our analysis emphasizes that, when legal costs exceed the stakes, there may be no suits and thus no deterrence; aggregating claims also solves this problem (although it is still possible that the aggregated claim may not be socially desirable if the benefit from improved behavior is sufficiently small).").

[550] The Study only considered the credit card market. *See* Study, *supra* note 2, section 3 at 18. This finding might not be generalizable to any market where consumers face a significantly higher cost of switching providers.

[551] The Bureau notes that an incentive to act to preserve good reputation with the consumers is not necessarily the same as an incentive to comply with the law, especially when consumers are not even aware of the legal harm.

[552] *See, e.g.*, Carl Shapiro, *Consumer Information, Product Quality, and Seller Reputation*, 13 Bell J. of Econ. 20 (1982) for reputation and Posner *supra* note 546, section 13.1 for complementarity with public enforcement. Note that earlier economic literature suggested that reputation alone, coupled with competitive markets, could lead to an efficient outcome. *See, e.g.*, Benjamin Klein & Keith B. Leffler, *The Role of Market Forces in Assuring Contractual Performance*, 89 J. of Polit. Econ. 4 (1981). However, formal modeling of this issue revealed that earlier intuition was incomplete. *See* Carl Shapiro, *Premiums for High Quality Products as Returns to Reputations*, 98 Q. J. of Econ. 4 (1983).

[553] In addition, the non-compliance would have to be sufficiently egregious to cause consumers to want to switch given switching costs, and some consumers might not be able to switch ex-post at all depending on the product in question.

[554] *See* Shapiro, *supra* note 552. This underinvestment is a perpetual, rather than a temporary phenomenon: A firm underinvests today because consumers will not become aware of today's underinvestment until tomorrow, but then the firm also underinvests tomorrow because tomorrow's consumers will not become aware of tomorrow's underinvestment until the day after tomorrow, and so on. Moreover, competition is not a panacea in this model: Every firm rationally underinvests in compliance.

consumer could mean waiving a fee or reducing a charge, in what a provider may call a "one time courtesy," instead of changing the provider's procedures prospectively even with regard to the individual consumer.

Furthermore, economic theory suggests that providers will decide how to resolve informal complaints by weighing the expected profitability of the consumer who raises the complaint against the probability that the consumer will indeed stop patronizing the provider, rather than legal merit per se. In the Bureau's experience, some companies implement this through profitability models which are used to cabin the discretion of customer service representatives in resolving individual disputes. Indeed, providers may be more willing to resolve disputes favorably for profitable consumers even in cases where the disputes do not have a legal basis, than for non-profitable consumers with serious legal claims. Thus, reputation incentives do not always coincide with complying with the law.

Public enforcement could theoretically bring some of the same cases that are not going to be brought by private enforcement absent the proposed rule. However, public enforcement resources are limited relative to the thousands of firms in consumer financial markets. Public enforcement resources also focus only on certain types of claims (for instance, violations of state and Federal consumer protection statutes but not the parties' underlying contracts).[555] In addition, other factors may be at play, such as public prosecutors could be more cautious or have other, non-consumer finance priorities. For all these reasons, public enforcement can and will not entirely fill the void left by the lack of private enforcement. The Study is consistent with this prediction, suggesting that there is limited overlap between the two types of enforcement.[556]

The Bureau has considered arguments that arbitration agreements provide a sufficiently strong incentive to providers to address consumers' concerns and obviate the need to strengthen private enforcement mechanisms. One reason suggested is that many such agreements contain fee-shifting provisions that require providers to pay consumers' up front filing fees.[557] Some stakeholders have posited that the (ostensible) ease and low up front cost of arbitration may change many negative-value individual legal claims into positive-value arbitrations that, in turn, create an additional incentive for providers to resolve matters internally.[558] In principle, if arbitration agreements had the effect of transforming negative-value claims into positive ones, that would affect not just providers' incentives to resolve individual cases (as stakeholders have posited) but also their incentives to comply with the law ex ante.

As noted above, however, there is little if any empirical support for such an argument. The Bureau has only been able to document several hundred consumers per year actually filing arbitration claims,[559] and the Bureau is unaware that providers have routinely concluded that considerably more consumers were likely to file.

Additionally, the Bureau believes that this argument is flawed conceptually as well. The Bureau disagrees that, even for consumers who are aware of the legal harm, the presence of arbitration agreements changes many negative-value individual legal claims into positive-value arbitrations and, in turn, creates additional incentives for providers to resolve matters internally. Notably, consumers weigh several other costs before engaging in any individual dispute resolution process, including arbitration. It still takes time for a consumer to learn about the process, to prepare for the process, and to go through the process. There is also still a risk of losing and, if so, of possibly having initial filing fees shifted back to the consumer.

In addition, where arbitration agreements exist, consumers are still, in practice, more likely to use formal dispute resolution mechanisms (including small claims courts) than arbitration, and this suggests that arbitration does not turn negative-value claims positive.[560]

In general, if the extant laws were adopted to solve some other underlying market failures, it means that, by definition, the market could not resolve these failures on its own. Therefore, given the Bureau's assumptions outlined above, a practice (arbitration agreements that can be invoked in class litigation) that lowers providers' incentive to follow these laws is a market failure since it allows the underlying market failures to reappear. The providers (and the market in general) are unable (do not find it profitable) to resolve this market failure for the same reasons (and frequently additional other reasons) that the providers could not (did not find it profitable to) solve the underlying market failures in the first place.[561]

Overview of Effects of the Proposed Rule

The proposed rule would require providers to include language in their arbitration agreements stating that the agreement cannot be used to block a class action with respect to those consumer financial products and services that would be covered by the proposed rule and would prohibit providers from invoking such an agreement in a case filed as a class action with respect to those consumer financial products and services. The proposed rule would also prohibit third-party providers facing class litigation from relying on such arbitration agreements. The Bureau believes that the proposed rule would have three main effects on providers with arbitration agreements: (1) They would have increased incentives to comply with the law in order to avoid class litigation exposure; (2) to the extent they do not act on these incentives or acting on these incentives does not prevent class litigation filed against them, the additional class litigation exposure would ultimately result in additional litigation expenses and potentially additional class settlements; and (3) they would incur a one-time cost of changing language in consumer contracts entered into 180 days after the rule's effective date, or an ongoing cost associated with providing contract amendments or notices in the case of providers who acquire pre-existing contracts that lack the required language in their arbitration agreements. Below, the Bureau refers to these three effects as, respectively, the deterrence effect, the additional litigation effect, and the administrative change effect.

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[555] *See* Part VI.

[556] *See generally* Study, *supra* note 2, section 9.

[557] The argument depends on arbitration being easy for consumers to engage in and costly to the providers. Thus, the providers seek to resolve all consumer disputes internally, under the threat that aggrieved consumers can (ostensibly easily) escalate the disputes to (ostensibly more expensive) arbitration.

[558] Note that a provider does not have to know, for example, during a consumer's call to the provider's service phone line whether this particular consumer will file for arbitration. The provider can wait until the consumer files for arbitration, and then resolve the matter with the consumer without paying any fees related to arbitration.

[559] *See generally* Study, *supra* note 2, section 5.

[560] *See* Study, *supra* note 2, section 1 at 15 (providers typically do not invoke arbitration agreements in individual cases). The Study showed that the presence of small claims court carve-outs in the majority of clauses. *See* Study, *supra* note 2, section 2 at 33.

[561] This argument also illustrates why form language regarding arbitration agreements is fundamentally different from standardized language regarding other contract terms, and is not necessarily efficient. The debate about the efficiency of boilerplate language, from the perspective of law and economics, is whether boilerplate language allows for more efficient contracting between the firm and the customer, thus enhancing both parties' welfares, or whether boilerplate language allows the firm to take advantage of its customer in a welfare-reducing manner, with this advantage potentially remaining even if the market is competitive. The same arguments apply to contracts of adhesion. *See, e.g.*, Symposium, *"Boilerplate": Foundations of Market Contracts*, 104 Mich. L Rev. No. 5 (2006). Any law restricting two parties' freedom to contract (for example, a mandatory disclosure or a limit on some financing terms in a consumer finance statute) introduces the following friction: To comply with the law, these two parties will agree to a different contract or not contract at all. Each of these options was available to the parties before the law was adopted, but at the time the parties chose to contract more efficiently from the parties' perspectives, at least to the extent that both parties had a choice. However, to the extent that the law was adopted to fix a market failure, this friction is exactly what is preventing that market failure from occurring: The introduction of the contracting friction is necessary for the underlying market failure to be alleviated, as opposed to being a potential source of inefficiency that could be reduced by using boilerplate contracts. That underlying market failure could be, for example, a negative externality exerted by the firm's and its customer's contract on third parties. In a theoretical model, this would imply that the laws were endogenously chosen to correct pre-existing market failures. And this fact means that an ability to sign an efficient contract from the bilateral perspective that lowers the incentives to comply with the law is welfare-reducing since this law was supposedly passed exactly to ensure that the incentive to comply with the law is there and because this incentive alleviates another market failure.

In this Section 1022(b)(2) Analysis, the Bureau abides by standard economic practice, and omits non-economic considerations which the Bureau considers above in Part VI (the Findings). In standard economic practice, individuals' well-being results primarily from tangible impacts and is affected by direct costs or payments, changes in behavior, and so on. Conceptually, it also includes less concrete impacts on individuals, such as their "degree of aesthetic fulfillment, their feelings for others, or anything else they might value, however intangible." [562] However, such items can be extraordinarily difficult to discern and evaluate in practice. Moreover, economic theory does not generally recognize the value of intangible impacts to society at large apart from costs or benefits that accrue to specific individual consumers or providers.[563]

To take one example specific to this rulemaking, the economic conception of well-being would count any value that consumers derive from perceiving class settlements as indications that justice is being served and the rule of law is being upheld, but it would not recognize as an economic benefit any value to society at large from justice being served.[564] And in practice, with regard to the value that individual consumers derive from such considerations, the Bureau is unaware of any applicable studies that would allow the Bureau to assess the strength of this value separate and apart from deterrence, relief, or other tangible benefits.[565]

Another example would be the impact on some consumers of lost privacy that could result when providers would be required to send redacted arbitration records about them to the Bureau. Unlike the impact on consumers when their data becomes public in a data breach, the impact of the lost privacy that the proposed rule could create is generally something that, if it exists, the Bureau does not have the ability to assess meaningfully, especially given the nature of the proposed redactions. And, as discussed above with the value that consumers may derive from the rule of law being upheld, the Bureau is unaware of any applicable studies that would allow the Bureau to assess the strength of this privacy value.

Accordingly, while as discussed in Part VI above, the Bureau believes that the proposal is in public interest due, in part, to reinforcing the rule of law, the discussion in this section considers the standard economic concept of individual well-being and focuses in particular on more tangible impacts on individual consumers and providers that are readily ascertainable in the framework under which the Bureau is assessing the costs and benefits of the proposed rule for purposes of this Section 1022(b)(2) Analysis.[566]

The Deterrence Effect

As discussed above, class litigation exposure provides a deterrence incentive to providers, above and beyond other incentives they may have to comply with the law. So long as the level of class litigation exposure is related to the level of providers' compliance with laws (that is, so long as class litigation is not brought randomly without regard to the level of compliance and thus is meritless in general), providers would want to ensure more compliance than if there was no threat of class litigation.[567] Given the Bureau's assumptions outlined above, economic theory suggests that providers who are immune from class litigation currently under-comply from the economic welfare perspective, and therefore this additional deterrence is beneficial.[568] For this purpose, both the cost of class relief and the cost of related litigation is counted as contributing to the size of the strengthened compliance incentives.[569]

At least two sources might inform a provider's determination of its profit-maximizing level of compliance in a regime in which there is potential class action exposure for non-compliance. First, the potential exposure can cause a provider to devote increased resources to monitoring and evaluating compliance, which can in turn lead the provider to determine that its compliance is not sufficient given the risk of litigation. Second, the potential exposure to class litigation can cause a provider to monitor and react to class litigation or enforcement actions (that could result in class litigation) against its competitors, regardless of whether the provider previously believed that its compliance was sufficient.

The Additional Litigation Effect

A class settlement could result in three types of relief to consumers: (1) Cash relief (monetary payments to consumers); (2) in-kind relief (free or discounted access to a service); and (3) injunctive relief (a commitment by the defendant to alter its behavior prospectively, including the commitment to stop a particular practice or follow the law).

When a class action is settled, the payment from the provider to consumers is intended to compensate class members for injuries suffered as a result of actions asserted to be in violation of the law and is a benefit to those consumers. However, this benefit to consumers is also a cost to providers.[570] This payment from the provider to consumers in and of itself is, in economic terms, a transfer,[571] regardless of whether this payment is a remedy for a legal wrong or restitution of providers' previous ill-gotten gains from consumers that led to the class action in the first place. To effectuate the transfer there are also other costs involved, such as spending on attorneys (both the plaintiff's and the defendant's) and providers' management and staff time, making any such transfer payment in and of itself (*i.e.,* absent any consideration of its deterrent impact) economically inefficient.[572] These costs are incurred both in cases with an eventual class settlement and in cases that ultimately are dismissed by motion, abandoned, or settled on an individual basis, although the magnitude of the costs may vary depending upon how a case is resolved.[573] Thus, economic theory views class actions that result solely in cash relief as inefficient (*i.e.,* absent any consideration of its deterrent impact). More generally, under standard economic theory, any delivery system for formal or informal compensation of victims for violations of law is typically inefficient unless this system of remedies deters at least some of these violations before they occur.

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[562] Kaplow & Shavell, *supra* note 549 at 968.

[563] "Conversely, welfare economics omits any factor that does not affect any individual's well-being." *Id.*

[564] *Id.* at 975 ("[P]eople might feel upset if wrongdoers escape punishment, quite apart from any view people might have about the effect of punishment on the crime rate.").

[565] *See, e.g.,* Christopher Anderson & Louis Putterman, *Do Non-Strategic Sanctions Obey the Law of Demand? The Demand for Punishment in the Voluntary Contribution Mechanism,* 54 Games and Econ. Beh. 1 (2006); Jeffrey Carpenter, *The Demand for Punishment,* 62 J. of Econ. Beh. & Org. 522 (2007) for two examples of such studies using lab experiments with college students.

[566] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs. In this rulemaking, the Bureau, as a matter of discretion, has chosen to focus on the tangible, economic impacts on individual consumers and providers.

[567] *See, e.g.,* Kaplow & Shavell *supra* note 549 at 1166, ("In many areas of law . . . a primary reason to permit individuals to sue is that the prospect of suit provides an incentive for desirable behavior in the first instance.").

[568] *See* Gary Becker, *Crime and Punishment: An Economic Approach,* 76 J. Pol. Econ. 169 (1968). *See also* Shapiro, *supra* note 552; Posner, *supra* note 546. See discussion above on why other incentives to comply, such as public enforcement and reputation, are often insufficient or could be made more effective and efficient by introducing private enforcement as well.

[569] *See* Kaplow & Shavell, *supra* note 549.

Much of the discussion above also applies to in-kind and injunctive relief. In-kind relief is intended to compensate class members for injuries suffered as a result of actions asserted to be in violation of the law in ways other than by directly providing them with money. Injunctive relief is typically intended to stop or alter the defendant's practices that were asserted to be in violation of law. Both forms of relief benefit consumers. However, this benefit to consumers is also frequently a cost to providers (*e.g.,* if the practice that the provider agrees to halt was profitable, the loss of that profit is a cost to the provider). To effectuate the relief there are some similar transaction costs involved as with monetary relief, such as spending on attorneys (both the plaintiff's and the defendant's) and providers' management time.

Unlike with monetary relief, however, the benefits to consumers of in-kind and injunctive relief may not be a mirror image of the costs to providers, and the cost of providing the relief might be lower than consumer's value of receiving the relief.[574] In that event, litigation could be viewed as efficient from the perspective of economic theory independent of any deterrent effect.

The Administrative Change Effect

The proposed class rule would mandate that providers with arbitration agreements include a provision in their future contracts stating that the provider cannot use the arbitration agreement to block a class action. This administrative change would require providers to incur expenses to change their contracts going forward, and amend contracts they acquire or provide a notice.[575] However, there would also be benefits related to this proposed requirement: Any eventual litigation could proceed more smoothly due to the lack of need for courts or arbitrators to analyze whether the Bureau's rule indeed applies in the particular case (to the extent that the provider has complied with the proposed rule's language requirement). The new contract language could reduce legal fees and the time spent in court for both parties in class litigations. Moreover, to the extent providers adopt arbitration agreements that comply, attorneys would not need to be familiar with the Bureau's rule to know that an arbitration agreement could not be invoked in class litigation.

B. Potential Benefits and Costs to Covered Persons

Overview

Given that providers using arbitration agreements have chosen to do so and would be limited in their ability to continue doing so by the proposed rule, these providers are unlikely to experience many notable benefits from the Bureau's proposed rule.[576] Rather, the benefits of the proposed rule would flow largely to consumers, as discussed in detail in the next part of this section.

Providers' costs correspond directly to the three aforementioned effects of the proposed rule: (1) Providers would experience costs to the extent they act on additional incentives for ensuring more compliance with the law; (2) providers would spend more to the extent that the exposure to additional class litigation materializes into additional litigation; and (3) providers would incur a one-time administrative change cost or ongoing amendment or notices costs. The Bureau considers each of these effects in turn. To the extent providers would pass these costs through to consumers, providers' costs would be lower. Providers' pass-through incentives are discussed further below.

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[570] There might also be an associated increase in prices due to firms passing on the cost of these payments back to consumers. See the discussion on pass-through below.

[571] "Benefit and cost estimates should reflect real resource use. Transfer payments are monetary payments from one group to another that do not affect total resources available to society." Office of Mgmt. & Budget, Exec. Office of the President, Circular A–4, Regulatory Analysis, (Sept. 17, 2003) at 38, available at *https://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf. See* Richard Posner, *Cost-Benefit Analysis: Definition, Justification, and Comment on Conference Papers,* 29 J. of Leg. Studies 1153, 1155 (Univ. of Chi. Press 2000) ("In the discussion at the conference John Broome offered as a counterexample to the claim that efficiency in the Kaldor-Hicks sense is a social value the forced uncompensated transfer of a table from a poor person to a rich person. I agree that allowing the transfer would not improve social welfare in any intelligible sense. But it would not be Kaldor-Hicks efficient when one considers the incentive effects.").

[572] As noted above, these other costs still contribute to the deterrence incentive.

[573] Given the Bureau's assumptions outlined above, because of these costs, from the perspective of economic theory, the best outcome is the one where the possibility of class litigation results in optimal compliance, and this optimal compliance in turn results in no actual class litigation occurring.

[574] This is more likely to be the case where there were also pre-existing negotiation frictions that prevented a Coasian outcome. The Coase Theorem, applied to this context, postulates that a firm provides a service to its customer if and only if the customer values the service more than its costs. When the Coase Theorem holds, such a delivery system of formal or informal relief will typically be inefficient, since the efficiency of the interaction between the firm and its consumer would have already been maximized before any relief occurred. As noted in Ronald Coase, *The Problem of Social Cost,* 3 J. of L. & Econ. 1 (1960), absent transaction costs, the Coase Theorem holds. However, again as Coase notes, presence of transaction costs might result in such a solution not materializing. In general, economic theory behind optimal choices by firms in such contexts is ambiguous, at least as long as a solution consistent with the Coase Theorem is not available because of a particular pre-existing market friction (transactions costs). *See, e.g.,* A. Michael Spence, *Monopoly, Quality & Regulation,* 6 Bell J. of Econ. 417 (1975). For a somewhat more accessible treatment (at a cost of assuming away several issues), *see* Richard Craswell, *Passing on the Cost of Legal Rules: Efficiency and Distribution in Buyer-Seller Relationships,* 43 Stan. L. Rev. 361 (1991).

[575] As discussed further below, providers like debt buyers or indirect auto lenders would need to provide notices to consumers upon purchase of consumer debt with an arbitration agreement that does not adhere to the proposed rule's mandated provision.

[576] The Bureau believes that it is possible that some providers without arbitration agreements would benefit from the proposed rulemaking. Their rivals' costs would increase, and thus providers without arbitration agreements benefit to the extent that cost increase is passed through to consumers (or to the extent rivals change their aggressive practices). *See* Steven C. Salop and David T. Scheffman, *Raising Rivals' Costs,* 73 a.m. Econ. Rev. 267 (1983). However, the Bureau believes that the magnitude of this benefit is relatively low. In addition, the Bureau acknowledges that these providers without arbitration agreements would lose the option going forward to adopt an arbitration agreement that could be invoked in class litigation. As discussed above, economic theory treats a constraint on a party's options as imposing costs on that party, though given that these providers currently do not have arbitration agreements, the Bureau believes that the magnitude of this cost is also relatively low. Thus, for the ease of presentation and due to the low magnitude of these benefits and costs, the Bureau focuses its analysis only on providers that currently have arbitration agreements.

Covered Persons' Costs Due to Additional Compliance

Persons exposed to class litigation have a significant monetary incentive to avoid class litigation. The proposed rule would prohibit providers from using arbitration agreements to limit their exposure to class litigation. As a result, providers may attempt to lower their class litigation exposure (both the probability of being sued and the magnitude of the case if sued) in a multitude of other ways. All of these ways of lowering class litigation exposure would likely require incurring expenses or forgoing profits. The investments in (or the costs of) avoiding class litigation described below, and other types of investments for the same purpose, would likely be enhanced by monitoring the market and noting class litigation settlements by the competitors, as well as actions by regulators. Providers would also likely seek to resolve any uncertainty regarding the necessary level of compliance by observing the outcomes of such litigation. These investments might also reduce providers' exposure to public enforcement.

The Bureau has previously attempted to research the costs of complying with Federal consumer financial laws as a general matter, and found that providers themselves often lack the data on compliance costs.[577] Even if basic data were available on how much money providers invest in legal compliance generally—as distinct from investments in customer service, general risk management, and related undertakings and functions—it is difficult to isolate the marginal compliance costs related to particular deterrence and to quantify any additional investment that would occur in the absence of arbitration agreements. Specifically, any differences in compliance-related expenditures between firms that have and do not have arbitration agreements may be the result of other underlying factors such as a general difference in risk tolerance and management philosophy. Thus, given the data within its possession, the Bureau is unable to quantify these costs. The Bureau again requests comment and data, if available.

The Bureau believes that, as a general matter, the proposed rule would increase some providers' incentives to invest in additional compliance. The Bureau believes that the additional investment would be significant, but cannot predict precisely what proportion of firms in particular markets would undertake which specific investments (or forgo which specific activities) described below.

However, economic theory offers general predictions on the direction and determinants of this effect. Whether and how much a particular provider would invest in compliance would likely depend on the perceived marginal benefits and marginal costs of investment. For example, if the provider believes that it is highly unlikely to be subject to class litigation and that even then the amount at stake is low (or the provider is willing to file for bankruptcy if necessary to ward off a case), then the incentive to invest is low. Conversely, if the provider believes that it is highly likely to be subject to class litigation and that the amount at stake would be large if it is sued, then the incentive to invest is high.

Providers' calculus on whether and how much to invest in compliance may also be affected by the degree of uncertainty over whether a given practice is against the law, as well as the size of the stakes. Where uncertainty levels are very high and providers do not believe that they can be reduced by seeking guidance from legal counsel or regulators or by forgoing a risky practice that creates the uncertainty, providers may have less incentive to invest in lowering class litigation exposure under the logic that such actions will not make any difference in light of the residual uncertainty about the underlying law. In the limit, if a provider believes that class litigation is completely unrelated to compliance, then the provider will rationally not invest in lowering class litigation exposure at all: the deterrence effect is going to be absent. Nonetheless, the Bureau believes that many providers know that class litigation is indeed related to their actual compliance with the law and adherence to their contracts with consumers.[578] Moreover, because court cases, rulemakings, and other regulatory activities address areas of legal uncertainty over time, the Bureau believes that providers at a minimum would have incentives to respond to class litigation against them and their competitors and to respond to other new legal developments as they occur.

Examples of Investments in Avoiding Class Litigation

Providers who decide to make compliance investments might take a variety of specific actions with different cost implications. First, providers might spend more on general compliance management. For example, upon the effective date of the rule, if finalized, a provider might decide to go through a one-time review of its policies and procedures and staff training materials to minimize the risks of future class litigation exposure. This review might result in revisions to policies and additional staff training. There might also be an ongoing component of costs arising from periodic review of policies and procedures and regularly updated training for employees, as well as third-party service providers, to mitigate conduct that could create exposure to class litigation.[579] Moreover, there might be additional costs to the extent that laws change, class litigation cases are publicized, or new products are developed. Both the one-time and the ongoing components could also include outside audits or legal reviews that the provider might perform.

Second, providers might incur costs due to changes in the consumer financial products or services themselves. For example, a provider might conclude that a particular feature of a product makes the provider more susceptible to class litigation, and therefore decide to remove that feature from the product or to disclose the feature more transparently, possibly resulting in additional costs or decreased revenue. Similarly, a provider might update its product features based on external information, such as actions against the provider's competitors by either regulators or private actors. The ongoing component could also include changes to the general product design process. Product design could consume more time and expense due to additional rounds of legal and compliance review. The additional exposure to class litigation could also result in some products not being developed and marketed primarily due to the risk associated with class litigation.

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[577] *See* Bureau of Consumer Fin. Prot., Understanding the Effects of Certain Deposit Regulations on Financial Institutions' Operations (2013), available at *http://files.consumerfinance.gov/f/201311_cfpb_report_findings-relative-costs.pdf*, for challenges in general and for a description of the amount of resources spent collecting compliance information from seven banks with respect to their compliance to parts of four regulations. A significant part of the challenge is that providers typically do not track their compliance costs and it is not possible to calculate them from the standard accounting metrics.

[578] This is hard to measure empirically and the Bureau requests comments on or submissions of any empirical studies that have measured the merit of class actions involving consumer financial products or services. The Bureau is aware of some empirical literature on this question involving securities but does not believe that this literature directly applies in this context. *See, e.g.,* Joel Seligman, *The Merits Do Matter: A Comment on Professor Grundfest's "Disimplying Private Rights of Action Under the Federal Securities Laws: The Commission's Authority,"* 108 Harv. L. Rev. 438 (1994).

[579] The providers that already have a compliance management system with an audit function could, for example, increase the frequency and the breadth of audits.

Some of the compliance changes that providers might make are relatively inexpensive changes in business processes that nonetheless are less likely to occur in the absence of class litigation exposure. Three examples of such investments in compliance follow. First, under the Fair Debt Collection Practices Act, debt collectors are not allowed to contact a consumer at an unusual time or place which the collector knows or should know to be inconvenient to the consumer.[580] However, it is highly unlikely that even a consumer who is aware of this rule will bring an individual lawsuit or an individual arbitration over a single contact because it will require considerable time on the consumer's part, which is likely to be an even higher burden for consumers subject to debt collection than for other types of consumers. To the extent that a debt collector wants to minimize class litigation exposure, however, it could develop a procedure to avoid such contacts.

As a second example, consider a bank stopping an Automated Clearing House (ACH) payment to a third party at a consumer's request. While important to a consumer, absent the possibility of class litigation, the bank's primary incentive to ensure that the ACH payment is discontinued is to maintain a positive reputation with this particular consumer.[581] It is highly unlikely that a consumer would sue individually if the bank fails to take action, and it might even be unlikely that the consumer would switch to another bank because of that failure, especially given the switching costs entailed in such a move. However, a bank could invest in developing proper procedures to ensure that such payments are stopped at most three business days after a consumer's request as required under prevailing law.

The third example is a creditor sending a consumer an adverse action notice explaining the reasons for denial of a credit application.[582] While knowing when and why a denial has occurred may be important to an individual consumer, it is unlikely that a consumer would bring an individual suit based on the failure to provide such a notice (some consumers will not even know they are entitled to one) or on its content (consumers will not generally be in a position to know whether the reason given is legally sufficient or accurate). The consumer is more likely to seek credit from another source, or simply to proceed unaware of the reasons why they are not able to access credit. However, a creditor could invest in improving its notice procedures and content.

Covered Persons' Costs Due to Additional Class Litigation: Description of Assumptions Behind Numerical Estimates

Additional investments in compliance are unlikely to eliminate additional class litigation completely, at least for some providers.[583] Thus, if the class proposal is finalized, those providers that are sued in a class action would also incur expenses associated with additional class litigation. The major expenses to providers in class litigation are payments to class members and related expenses following a class settlement, plaintiff's legal fees to the extent that the provider is responsible for paying them following a class settlement, the provider's legal fees and other litigation costs (in all cases regardless of how it is resolved), and the provider's management and staff time devoted to the litigation.

To provide an estimate of costs related to class settlements of incremental class litigation that would be permitted to proceed under the proposed rule, the Bureau developed estimates using the data underlying the Study's analysis of Federal class settlements over five years (2008–12), the Study's analysis of arbitration agreement prevalence, and additional data on arbitration agreement prevalence collected by the Bureau through outreach to trade associations in several markets during the development of this proposal.[584] The Bureau had classified each case in the Study by the North American Industry Classification System (NAICS) code that most closely corresponded to the consumer financial product or service at issue in the case.[585]

To estimate the impact of the rule the Bureau used the Study data to estimate the percentage of providers in each market with an arbitration agreement today. The Bureau assumed that the class settlements that occurred involved providers without an arbitration agreement. The Bureau was then able to calculate the incidence and magnitude of class action settlements for those providers in each market and use these calculations to estimate the impact of the proposed rule going forward in each market if the providers who currently have arbitration agreements were no longer insulated from class actions.

The Bureau's estimation of additional Federal class litigation costs is based upon the set of Federal class settlements analyzed in the Study, with adjustments to align those data with the scope of the proposed rule, which is somewhat narrower.[586] The Study sought to identify all class action settlements involving any of the enumerated consumer financial statutes under Title X of the Dodd-Frank Act. The proposed rule is narrower in scope. Due to its narrower scope, the proposed rule would only have an impact on those entities within the proposed coverage when they offer products and services subject to the proposed rule, rather than the broader scope of the research of Federal class actions in the Study. Additionally, the proposed rule would not have an impact on cases in which arbitration agreements cannot play a role today, either because the law does not allow them to be used for the type of dispute at issue or that type of dispute does not involve a written contract with the consumer on which the defendant in the case could rely to invoke arbitration.[587] The set of Federal class settlements the Bureau uses to estimate impact therefore excludes 117 Federal class settlements analyzed in Section 8 of the Study.[588] In addition, to avoid underestimating the effects, the estimates in this section of the proposed rule also include 10 additional class settlements identified through the Section 8 search methodology which may be within the scope of the proposed rule and affected by it but which had not been counted in the data analyzed in Section 8.

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[580] 15 U.S.C. 1692(a)

[581] A bank would have to stop such payments in at most three business days after a consumer's request. *See* 15 U.S.C. 1693e(a).

[582] A creditor would have to send such a notice. *See* 15 U.S.C. 1681m(a).

[583] For example, as noted above, some providers might choose to forgo sufficient additional investment in compliance.

[584] *See generally* Study, *supra* note 2, sections 2 and 8. During the SBREFA process, the Bureau sought and obtained permission from OMB to conduct a survey of trade groups (and potentially providers) in order to assess the prevalence of arbitration agreements in the markets for which prevalence was not reported in the Study. Unless the trade groups had an exact estimate, the Bureau asked the trade group representatives to pick one of four options for the prevalence of arbitration agreements in a given market, with the percentages in the brackets also mentioned: (1) Barely any providers use arbitration agreements [0 percent-20 percent]; (2) some providers but fewer than half use arbitration agreements [20 percent-50 percent]; (3) more than half but not the vast majority use arbitration agreements [50 percent-80 percent]; and (4) the vast majority use arbitration agreements [80 percent-100 percent]. The Bureau then inquired whether this number would change if the question had been asked to just small providers. For the markets for which prevalence was analyzed in the Study, the Bureau converted the estimate from the Study into one of these four ranges. Finally, the Bureau utilized the midpoint of each range for this quantification exercise (for example, assuming that 35 percent of providers use arbitration agreements if the trade group reported that some, but less than half [20 percent-50 percent] of providers use arbitration agreements). See Part IX below for further description of the data received from the trade groups. Any inaccuracy in the prevalence numbers affects the estimates below. For example, if prevalence is actually higher in a particular market than the number used by the Bureau, then the actual costs to providers (and benefits to consumers) would be higher. In this example, the increases in across all markets costs to providers and benefits to consumers (stemming from the relief to class members) are not necessarily symmetric, since the Bureau's estimates are market-by-market.

[585] *See* U.S. Census Bureau, *North American Industry Classification System* (2012), *available at http://www.census.gov/eos/www/naics/*.

[586] The Study's Section 8 analyzed class settlements of claims under enumerated consumer laws, unless excluded as described in the methodology for Section 8. *See* Study, *supra* note 2, Appendix S at 129. In addition, class settlements of claims concerning consumer financial products or services more generally were included, even if claims were not raised under enumerated consumer laws. *Id.*

The resulting set of 312 cases used to estimate impact of the proposed rule on Federal class litigation are identified in Appendix A hereto, along with a list of the 117 excluded cases described above in Appendix B. The Bureau notes that the total amount of payments and attorney's fees—the two statistics that the Bureau uses for its estimates in this Section 1022(b)(2) Analysis—for the 312 cases are not materially different than the totals for the aforementioned cases from the 419 used in the Study. That is largely a function of the fact that the additions and subtractions were for the most part relatively small class actions that did not contribute materially to the amount of aggregate gross or net relief.

With regard to the Bureau's estimations overall, the accuracy of the estimates is limited by the difficulty that often arises in data analysis of disentangling causation and correlation, namely unobserved factors than can affect multiple outcomes. As noted above, the core assumptions underlying the Bureau's estimates are that the settlements identified in the Study were all brought against providers without an arbitration agreement and that providers with arbitration agreements affected by the rule would be subject to class settlements to the same extent as providers without arbitration agreements today. The first assumption is a conservative one: It is likely that some of the settlements involved providers with arbitration agreements that they either chose not to invoke or failed to invoke successfully, in which event the Bureau's incidence estimates here are overstated. On the other hand, similar to issues discussed above with regard to estimating compliance-related expenditures, it may be that some other underlying factor (such as a general difference in risk tolerance and management philosophy) might prompt providers that use arbitration agreements today to take a different approach to underlying business practices and product structures than providers who otherwise appear similar but have never used arbitration agreements. This might make providers who use arbitration agreements today more prone to class litigation than providers who do not, and increase both the costs to providers and benefits to consumers discussed below.

The Bureau also generally assumed for purposes of the estimation that litigation data from 2008 to 2012 were representative of an average five-year period. However, the Bureau recognizes that the Bureau's own creation in 2010 may have increased incentives for some providers to increase compliance investments, although it did not begin enforcement actions until 2012. To the extent that the existence and work of the Bureau, including its supervisory activity and enforcement actions, increased compliance since 2010 in the markets the proposed rule would affect, the estimates of costs to providers and the benefits to consumers going forward would be overestimates.

To provide a more specific illustration of the Bureau's methodology, suppose for example that out of 1,000 providers in a particular market (NAICS code), 20 percent currently use arbitration agreements, and the Bureau found 40 class litigation settlements over five years. That implies that 800 providers (1,000—1,000 * 20 percent) did not use arbitration agreements and the overall exposure for these 800 providers was 40 cases total, for a rate of 5 percent (40/800) for five years. In turn, this implies that the 200 providers (1,000 * 20 percent) that currently use arbitration agreements would be expected to face, collectively, 10 class settlements in five years (200 * 5 percent), or 2 class settlements per year (10/5).[589] The Bureau performs similar calculations for the monetary exposure in terms of payments to class members and plaintiff's attorney's fees.

In the Study, the Bureau reports both the amount defendants agreed to provide as cash relief (gross cash relief) and the amount that public court filings established a defendant actually paid or was unconditionally obligated to pay to class members because of either submitted claims, an automatic distribution requirement, or a pro rata distribution with a fixed total amount (payments).[590] The Bureau documented about $2 billion in gross cash relief and about $1.09 billion in payments.[591] The actual (as opposed to documented by the end date of the Study) payments to consumers from the 419 Federal class settlements in the Study are somewhere between these two numbers. The Bureau uses the documented payments amount ($1.09 billion in total) as an input in calculating payments to class members in the derivations below. However, accounting for the different scope of the proposed rule results in the aggregate payment amount changing from $1.09 billion to $1.07 billion.[592] In contrast, using gross cash relief would roughly double the calculated amount of payments to class members (thus it would double both this cost to providers and the benefit to consumers, but not any other costs to providers such as legal fees).

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[587] Persons offering or providing similar products or services might be covered by the proposed rule in some circumstances; the Bureau's estimates are not a legal determination of coverage.

[588] *See* Appendices A and B hereto for additional details on adjustments in three other cases.

[589] These calculations were done by NAICS codes and adjusted for the composition of the debt portfolios at debt collectors. According to the comments made by SERs and other anecdotal evidence, debt collectors currently do not differentiate between debt incurred on contracts with and without arbitration agreements when deciding whether to collect on such debt. Many debts in their portfolios do not involve arbitration agreements and their ability to invoke agreements where they are present in the original credit contracts varies depending on the circumstances. *See* SBREFA Panel Report, *supra* note 332 at Appendix A. Thus, as discussed above, arguably all debt collectors face the risk of class litigation already. However, as discussed above, they are likely to experience an increase in risk proportional to the share of debt that they are collecting on that currently enjoys arbitration agreement protection. For purposes of this calculation, the Bureau assumed that 53 percent of debt collectors' current portfolios are subject to arbitration agreements based on the Study's estimate that 53 percent of the credit card loans outstanding are subject to arbitration agreements. Study, *supra* note 2, section 2 at 7. Thus, the Bureau assumed that the proportion of debt collectors' general portfolios that would be affected by the proposal has a prevalence of arbitration agreements on par with credit card debt. The prevalence is likely to be different from 53 percent as there are other sources of debt, for example, payday and medical debt. As with other estimates of prevalence, if 53 percent is an underestimate, then debt collectors would incur more costs (and consumers would experience more benefits).

[590] *See* Study, *supra* note 2, section 8 at 3–5 and 23–29.

[591] The Bureau notes that the number of class cases litigated, and the corresponding numbers for both gross cash relief and payments vary year-to-year. *See* Study, *supra* note 2, section 8 at 12, 16, 24, and 27.

[592] The data presented below with respect to a given market is after adding and dropping the aforementioned cases from the 419 used in the Study. The total amount of payments, or other aggregate statistics, did not change materially due to adding and dropping these cases.

The Study documents relief provided to consumers and attorney's fees paid to attorneys for the consumers,[593] but the Study does not contain data on the defense costs incurred by the providers because these data were not available to the Bureau. The Bureau therefore estimated defendant's attorney fees based on plaintiff's attorney's fees with appropriate adjustments.[594] Specifically, the Bureau believed it was important to account for the fact that while plaintiff's attorneys are compensated in class actions largely on a contingent basis (and thus not only lose the time value of money but, moreover, face the risk of losing the case and earning nothing), the defendant's attorneys and the defendant's staff are often compensated on an hourly or salary basis, and face considerably lower risk. Courts review attorney's fees in class action settlements for reasonableness. One way courts do this is to first calculate a "lodestar" amount by multiplying the number of hours the attorneys devoted to the case by a reasonable hourly rate, and then adjust that amount by a lodestar multiplier designed to compensate the plaintiff's attorneys for the risk they took in bringing the case with no guarantee of payment.[595] To the extent that lodestar multipliers incorporate a risk inapplicable to defense costs, the Bureau believes that the proper comparison for the defendant's cost is the unadjusted plaintiff's attorney's fees.

By reviewing the cases used in Section 8 of the Study, the Bureau documented lodestar multipliers in about 10 percent of the settlements. The average multiplier across those cases was 1.71, and thus the Bureau uses this number for calculations below.[596] Thus, the Bureau assumes that in all cases the plaintiff's attorney's fees awarded were 171 percent of the base amount, including in cases where the Bureau did not find a lodestar multiplier, which also include the cases where attorneys were compensated based on a percentage of the settlement amount.

The Bureau also notes that the estimates provided below are exclusively for the cost of additional Federal class litigation filings and settlements. The Bureau does not attempt to monetize the costs of additional state class litigation filings and settlements because limitations on the systems to search and retrieve state court cases precluded the Bureau from developing sufficient data on the size or costs of state court class action settlements. Based on the Study's analysis of cases filed, the Bureau believes that there is roughly the same number of class settlements in state courts as there is in Federal courts across affected markets;[597] however, the Bureau generally believes that the amounts at stake are not nearly as large in state courts.[598] The Bureau notes that while the total number of putative class cases filed might be similar in Federal and state courts, the relative frequency of state and Federal class actions may vary in different markets.[599] For example, there might be considerably more putative state class actions filed against auto lenders or smaller payday operators than putative Federal class cases. On the other hand, there might be considerably more putative Federal class actions filed against large national banks than putative state class actions.

In some markets, such as the payday loan market, there were Federal class settlements related to debt collection practices, which this Part classifies as relating to the debt collection market.

Covered Persons' Costs Due to Additional Class Litigation

The Bureau estimates that the proposed rule would create class action exposure for about 53,000 providers (those who fall within the coverage of the proposed rule and currently have an arbitration agreement).[600] Based on the calculation described above, the Bureau's model estimates that this class action exposure would result—on an annual basis—in about 103 additional class settlements in Federal court. In those cases, the Bureau estimates that an additional $342 million would be paid out to consumers, an additional $66 million would be paid out to plaintiff's attorneys, and an additional $39 million would be spent by providers on their own attorney's fees and internal staff and management time.[601]

These numbers should be compared to the number of accounts across the affected markets. While the total number of all accounts across all markets is unavailable, there are, for example, hundreds of millions of accounts in the credit card market alone. Thus, averaged across all markets, the monetized estimates provided above amount to less than one dollar per account per year. However, this exposure could be higher for particular markets.

The Bureau believes that these providers would enter into a similar number of class settlements in state court; however, with markedly lower amounts paid out to consumers and attorneys on both sides. Many cases also feature in-kind relief.[602] However, as in the Study, the Bureau is unable to quantify this cost in a way that would be comparable with payments to class members. Similarly, injunctive relief could result in substantial forgone profit (and a corresponding substantial benefit to the consumers), but cannot be easily quantified.[603]

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[593] These fees include other litigation costs such as expert report costs as well as amounts paid for settlement administrator costs. *See* Study, *supra* note 2, Appendix B at 137.

[594] Including other defense costs, such as discovery, and including the provider's staff and management time (as both staff and management will spend at least some time with their attorneys in defending the case).

[595] For this factor, the Bureau averaged lodestar multipliers from a subset of cases from the Study where the Bureau documented a lodestar multiplier. Plaintiff's attorney compensation in a class settlement is frequently computed using the time spent on the case, the per-hour rate of the attorneys, all adjusted by the "lodestar multiplier". The multiplier reflects various considerations, for example, the fact that when plaintiff attorneys do not settle a case, they will frequently not be compensated. *See, e.g.*, Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. of Emp. Leg. Stud. 27 (2004); Brian Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. of Emp. Leg. Stud. 811 (2010).

[596] Despite the small sample, this number is consistent with the finding by Professor Fitzpatrick of a 1.65 average. *See* Fitzpatrick, *supra* note 595, at 834.

[597] The Study found 470 putative Federal class actions filed between 2010 through 2012 versus 92 putative state class actions. However, the state class actions were only for jurisdictions representing 18.1 percent of the U.S. population (92/.181 = 508). *See* Study, *supra* note 2, section 6 at 16–17. Note that the scope of Section 6 included six markets, not all the markets that would be affected.

[598] Especially due to the Class Action Fairness Act of 2005, *supra* note 54, which in many cases allows defendants to remove class actions to Federal court when $5 million or more are at stake and other jurisdictional requirements are met.

[599] *See* Study, *supra* note 2, section 6 at 19 tbl. 4.

[600] *See* IRFA Analysis below for the data used to arrive at this estimate.

[601] These numbers do not include any estimates from costs or benefits from increased investment in compliance with the law. As discussed above, the Bureau is not estimating those numbers. The Bureau has also performed a sensitivity analysis by using market shares of providers with arbitration agreements in the checking account and credit card markets instead of prevalence that is unadjusted by market share. The Bureau used the numbers reported in Section 2 of the Study for this sensitivity analysis. This other specification changes the results to about 109 additional Federal class settlements, an additional $475 million paid out to consumers, an additional $114 million paid out to plaintiff's attorney's fees, and an additional $67 million for defendants' attorney's fees and internal staff and management time per year.

[602] *See* Study, *supra* note 2, section 8 at 4. As in the Study, the Bureau uses the term "in-kind relief" to refer to class settlements in which consumers were provided with free or discounted access to a service. *Id.*, section 8 at 4 n.6. While the Study quantified $644 million of in-kind relief, that number is included in relief, but not in payments in the Study, and the Bureau continues to follow this approach here, both for the calculation of costs to providers and benefits to consumers.

The Bureau performed a similar analysis to estimate the number of cases that would be filed as putative class actions, but would not result in a class settlement. Based on the data used in the Study, the Bureau believes that roughly 17 percent of cases that are filed as class litigations end up settling on a classwide basis.[604] For purposes of this estimate the Bureau again assumed that these putative class actions were all brought against providers without an arbitration agreement. This is a conservative assumption; it may be that the very reason that some of these putative class actions were resolved on an individual basis is precisely because of an arbitration agreement. Nonetheless, on this assumption and extrapolating from the estimated 103 additional Federal cases that would be settled on a classwide basis each year, the Bureau estimates that there would be 501 additional Federal court cases filed as class actions that would end up not settling on a classwide basis, assuming no change in filing behavior by plaintiff's attorneys.[605] Some of the Federal cases analyzed in the Study filed as class actions were filed against providers that had an arbitration agreement that applied to the case. Thus, the Bureau believes that such providers already face some exposure, which implies that both the 103 settled class cases and the 501 cases filed as class actions are likely overestimates of Federal court settlements.

In order to estimate the costs associated with these incremental Federal putative class actions, the Bureau notes that the Study showed that an average case filed as a putative class action in Federal court takes roughly 2.5 times longer to resolve if it is settled as a class case than if it is resolved in any other way.[606] The Bureau discusses two potential estimates below and presents the more conservative one in the table below.

For the purposes of the first defense cost estimate, the Bureau assumed that putative class action cases that are not settled on a class basis (for whatever reason) cost 40 percent (1 divided by 2.5) less to litigate. Therefore, the Bureau estimated that these additional 501 Federal class cases that do not settle on a class basis would result in $76 million per year in defense costs to providers. The Bureau did not include in this estimate recovery amounts in these putative class cases that did not result in a class settlement, as the Bureau believes those are negligible amounts (for example, a few thousand dollars per case that had an individual settlement). Based on similar numbers of Federal and State cases, it is likely that there would also be an additional 501 State cases filed that do not settle on class basis, whose cost the Bureau does not estimate due to the lack of nationally representative data; however, these cases would likely be significantly cheaper for providers.[607]

The Bureau believes that the calculation above might be an overestimate of time spent on such cases because both defendant's and plaintiff's attorneys frequently come to the conclusion, relatively early in the case, that the case will not result in a class settlement. Once such a conclusion is reached, the billable hours incurred by either side (in particular the defense) are likely significantly lower than for a case that is headed towards a class settlement, even if the final outcome of the two cases might be achieved in comparable calendar time. Similarly, many cases are resolved before discovery or motions on the pleadings; such cases are cheaper to litigate. In other words, at some point early in many putative class actions, the case becomes effectively an individual case (in terms of how the parties and their counsel treat the stakes of it), and from that point on, its cost should be comparable to the cost of an individual case (as opposed to a case settled on a classwide basis). The calculation above assumes that this point of transition to an individual case is the last day of the case.

In contrast, the opposite assumption is that from the first day of the case the parties (in particular, the defense) know that the case is not going to be settled on a classwide basis. Using this assumption, the 501 cases cost as much to defend as 501 individual cases. Using $15,000 per individual case as a defense cost estimate, the cost of these 501 cases would be approximately $8 million per year.[608] Thus, the Bureau believes that the correct estimate is somewhere between $8 and $76 million per year. For the purposes of clearer presentation, the Bureau conservatively presents the $76 million number in the table below.

The Bureau notes that for several markets the estimates of additional Federal class action settlements are low.[609] These low estimates could reflect some combination of the following four possibilities. First, as noted above, in some markets class actions are more commonly filed in state courts. Second, it is possible that in some markets, where there is less uncertainty, additional investment in compliance might result in no class actions filed.[610] Third, in some markets, by their nature, there will be few claims that can proceed as class actions, regardless of arbitration agreements, because there are not common issues that are predominant or because the market is highly dispersed. Fourth, in some markets the current prevalence of arbitration agreements is so high (over 80 percent) that any estimates are especially imprecise.

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[603] The Study quantified behavioral relief (defined as a part of injunctive relief) in the Study. The Bureau uses "behavioral relief" to refer to class settlements that contained a commitment by the defendant to alter its behavior prospectively, for example, by promising to change business practices in the future or implementing new compliance programs. The Bureau did not include a simple agreement to comply with the law, without more, as behavioral relief. Study, *supra* note 2, appendix B at 135. If the Bureau were to count such cases, there would likely be significantly more cases with behavioral relief. As the Bureau notes in the Study, behavioral relief is seldom quantified in case records, and thus the Bureau does not quantify it. Study, *supra* note 2, section 8 at 5 n.10.

[604] The Bureau reported a lower number (12.3 percent) in the Study based on final settlements approved before March 1, 2014, though as noted in the Study, nearly 30 additional cases had a final settlement or proposed class settlement entered as of August 31, 2014. Study, *supra* note 2, section 6 at 7 and 36.

[605] The Bureau estimated 102.7 (rounded to 103) additional Federal class settlements. Thus, the calculation for additional Federal cases that would be settled on a classwide basis is (102.7/.17)*(1−.17).

[606] *See* Study, *supra* note 2, section 6 at 46 tbl. 7.

[607] For the sensitivity analysis using market share prevalence data for checking account and credit card markets, the results are additional 530 Federal class cases that do not settle on class basis result in $130 million in costs to providers.

[608] While the $15,000 figure is hard to estimate, this estimate is consistent with data received from one of the SERs during the SBREFA process. *See* SBREFA Panel Report, *supra* note 332 at 18.

[609] As further discussed in Part IX below, a number of other markets are covered, but not sufficiently affected to the point that the Bureau would estimate the number of affected persons. The Bureau likewise does not generally include rows in the Federal class settlement estimate table for those markets.

[610] Although as the Bureau's estimates suggest, this is unlikely to be the case in many markets.

Table 1: Five-Year Summary of Estimated Additional Federal Class Action Settlements

NAICS	Description	Number of Lawsuits (data)	Total Payment (data)	Attorney Fees (data)	Prevalence (data)	Additional Federal Class Settlements (estimate)	Additional Total Payments (estimate)	Additional Attorney Fees (estimate)	Additional Defense Fees (estimate)	Additional Federal Class Cases Settled as Individual (estimate)	Additional Fees Due to Federal Class Cases Settled as Individual (estimate)
522298	Other nondepository credit, Pawnshops	0	0	0	0.1	0	0	0	0	0	0
541990	Credit Counseling and Debt Relief	4	$ 5,591,756	$ 3,379,013	0.65	7	$ 10,384,690	$ 6,275,310	$ 3,679,151	36	$ 7,185,166
561440	Debt Collectors	234	$ 56,848,405	$ 28,002,831	0.53	264	$ 64,105,648	$ 31,577,666	$ 18,513,666	1,288	$ 36,156,100
522110	Depository Institutions, Research Organization (LexisNexis), Student accounts, Student Loan Servicing	34	$ 556,721,398	$ 256,518,784	0.1	4	$ 61,857,933	$ 28,502,087	$ 16,710,488	18	$ 32,634,600
522291	P2P Lending, Other Personal Loans, Student Loan Issuance - Private, Third Party Payment Processing , Consumer Lending, Commercial Banking	4	$ 86,154,716	$ 11,149,054	0.3	36	$ 775,392,444	$ 100,341,486	$ 58,829,207	176	$ 114,889,981
561450	Credit Reporting Agencies, Credit Monitoring, Homeowners Insurance, Life Insurance (also includes NAICS 524126)	6	0	$ 5,428,000	0.65	11	0	$ 10,080,571	$ 5,910,138	54	$ 11,542,152
522210	Credit Cards, Consumer Lending	6	$ 277,041,928	$ 59,410,000	0.1	1	$ 30,782,436	$ 6,601,111	$ 3,870,165	3	$ 7,558,205
522320	Other Personal Loans, Other Money Transmitters / Remittances, Prepaid Cards, Payment Processing/Transfers, ACH systems, Check Guarantee, Third Party Financial Service Providers , Mobile Payments	3	$ 2,911,654	$ 8,450,000	0.35	2	$ 1,567,814	$ 4,550,000	$ 2,667,619	8	$ 5,209,704
522390	Payday Loan, Tribal Lending, Refund Anticipation Check, Deposit Advance, Servicing (non-mortgage), Virtual Currency, Traveler's Checks, Check Cashing, Mobile wallets, Debt Settlement/Relief, Marketplace loans, Tax Lending, Lump Sum Payment Company (payment advance)	1	$ 56,770	$ 57,780	0.9	9	$ 510,930	$ 520,020	$ 304,883	44	$ 595,418
522220	Installment Lending, Auto Title, Auto Finance, Truck/Boat/RV Finance, Non-Auto Consumer Product Leasing (also includes NAICS 532120)	12	$ 84,935,366	$ 6,752,360	0.9	108	$ 764,418,294	$ 60,771,237	$ 35,629,567	527	$ 69,582,449
441120	Buy-Here Pay-Here Auto Dealers	1	$ 100,000	$ 180,000	0.9	9	$ 900,000	$ 1,620,000	$ 949,790	44	$ 1,854,884
517110	Telephone - landline, Cable television, Cable Providers (First Party), Cell phones (also includes NAICS 517210)	7	$ 29,775	$ 8,991,981	0.9	63	$ 267,975	$ 80,927,826	$ 47,447,173	308	$ 92,661,538
Total		*312*	*$ 1,070,391,768*	*$ 388,319,802*		*514*	*$ 1,710,188,164*	*$ 331,767,309*	*$ 194,511,848*	*2,507*	*$ 379,870,197*
Per year						*103*	*$ 342,037,633*	*$ 66,353,462*	*$ 38,902,370*	*501*	*$ 75,974,039*

The Bureau notes that providers might attempt to manage the risks of increased class litigation exposure by opting for more comprehensive insurance coverage or a higher reimbursement limit. However, the

Bureau is not able to model the impacts of insurance in providers' response to the proposed rule. During the Small Business Review Panel, the SERs reported that it often is not clear to them which type of class litigation exposure a policy covers nor was it clear that providers typically ask about this sort of coverage. The SERs explained that their coverage is often determined on a more specialized case-by-case basis that limits at least small providers' ability to plan ahead. Larger firms may have more sophisticated policies and more systematic understanding of their coverage, however, or they may self-insure. Finally, the insurance providers might require at least some of the changes to compliance and products discussed above as a prerequisite for coverage or for a discounted premium.

Covered Persons' Costs Due to the Administrative Change Expense

Providers that currently have arbitration agreements (or who purchase contracts with arbitration agreements that do not include the Bureau's language) would also incur administrative expenses to make the one-time change to the arbitration agreement itself (or a notice to consumers concerning the purchased contract). Providers are likely to incur a range of costs related to these administrative requirements.

The Bureau believes that providers that currently have arbitration agreements would manage and incur these costs in one of three ways. First, the Bureau believes that some providers rely exclusively on third-party contract forms providers with which they already have a relationship, and for these providers the cost of making the required changes to their contracts is negligible (*e.g.*, downloading a compliant contract from the third party's Web site, with the form likely being either inexpensive or free to download).

Second, there might be providers that perform an annual review of the contracts they use with consumers. As a part of that review (provided it comes before the proposed rule becomes effective), they would either revise their arbitration agreements or delete them, whether or not most of these contracts are supplied by third-party providers. For these providers, it is also unlikely that the proposed rule would cause considerable incremental expense of changing or taking out the arbitration agreement insofar as they already engage in a regular review, as long as this review occurs before the rule becomes effective.

Third, there are likely to be some providers that use contracts that they have highly customized to their own needs (relative to the first two categories above) and that might not engage in annual reviews. These would require a more comprehensive review in order to either change or remove the arbitration agreement.

The Bureau believes that smaller providers are likely to fall into the first category. The Bureau believes that the largest providers would fall into either the second or the third category. On average across all categories, the Bureau believes that the average provider's expense for the administrative change to be about $400. This consists of approximately one hour of time from a staff attorney or a compliance person and an hour of supporting staff time. Given the Bureau's estimate of approximately 48,000 providers that use arbitration agreements,[611] the proposal's required contractual change would result in a one-time cost of $19 million, or about $4 million per year total for all providers if amortized over five years.[612] Alternatively, providers might choose to drop arbitration agreements altogether, potentially resulting in lower administrative costs.

In addition to the one-time change described directly above, some providers could be affected on an ongoing or sporadic basis in the future as they acquire existing contracts as the result of regular or occasional activity, such as a merger. Under proposed § 1040.4(a)(2), that would require providers who become a party to an existing contract with a pre-dispute arbitration agreement that does not already contain the language mandated by proposed § 1040.4(a)(2) to amend the agreement to include that provision, or send the consumer a notice indicating that the acquirer would not invoke that pre-dispute arbitration agreement in a class action.[613] Various markets might incur different costs due to this proposed requirement.

For example, buyers of medical debt could incur additional costs due to additional due diligence they would undertake to determine which acquired debts arise from consumer credit transactions (that would be subject to the proposed rule), or alternatively by the additional exposure created from sending consumer notices on debts that did not arise from credit transactions (*i.e.*, potential over-compliance). The Bureau does not believe that the cost of sending such a notice would be burdensome to the buyers of medical debt. In particular, the Bureau believes that medical debt buyers typically send out a notice to the consumer upon acquisition of debt due to requirements of 15 U.S.C. 1692(g), when applicable. The Bureau believes that these debt buyers could attach the additional notice that would be required by the proposed rule to this required FDCPA notice with a minimal increase in costs.

Indirect auto lenders might face a somewhat different impact. While a loan purchased from an auto dealer would be from a credit transaction, the dealer's contract might contain an arbitration agreement that does not include the language specified by the Bureau because the dealer would not be a provider under the rule. However, the Bureau believes that because dealers would be aware that their partner indirect auto lenders would be subject to the proposed rule, it is likely that dealers would voluntarily change their contracts to streamline the process for indirect auto lenders.

Costs to Covered Persons From the Proposed Requirements Regarding Submission of Arbitral Records

There would also be a minor cost related to the proposed rule's requirements regarding sending records to the Bureau related to providers' arbitrations. In the Study, the Bureau documented significantly fewer than 1,000 individual arbitrations per year.[614] Given that the proposed rule's requirements would involve sending records related to a particular arbitration to the Bureau, it is unlikely that the transmittal requirement would impose a cost of more than $100 per arbitration—a conservative estimate for the time required to copy or scan the documents, locate the address where to send the documents, and any postage costs. To the extent covered persons would be required to redact specific identifiers (such as name, physical and email address, phone number, account number, and social security number), this cost might increase, conservatively, by a few hundred dollars on average due to the time to train the staff on the specific identifiers and the time to redact the documents, for each arbitration.[615] Thus, the total cost of the proposed arbitration submission requirements is unlikely to reach $1 million per year given the current frequency of individual arbitrations. Moreover, these costs could be lower to the extent that providers decide not to use arbitration agreements in response to the rule.

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[611] *See* the Regulatory Flexibility Analysis below at Part IX. The Bureau estimates that 4,500 debt collectors would be subject to the rule but would not incur this cost because they do not act as the original provider of consumer financial products and services, and thus are unlikely to have contracts directly with the consumers with whom they interact.

[612] Some providers have multiple contracts: For example, some of the credit card issuers have filed dozens of contracts with the Bureau, *see http://www.consumerfinance.gov/credit-cards/agreements/*. Presumably, the marginal cost of changing each additional contract would be minimal, as long as each of the contracts used the same dispute resolution clause.

[613] The Bureau believes that medical debt buyers would be the most affected by this provision.

[614] *See generally* Study, *supra* note 2, section 5. Relatedly, JAMS (the second largest provider of consumer arbitrations) reported about 114 consumer financial products or services arbitrations in 2015.

Potential Pass-Through of Costs to Consumers

The Bureau believes that most providers would pass through at least portions of some of the costs described above to consumers. This pass-through can take multiple forms, such as higher prices to consumers or reduced quality of the products or services they provide to consumers. The rate at which firms pass through changes in their marginal costs onto prices (or interest rates) charged to consumers is called the pass-through rate.[616]

A pass-through rate of 100 percent means that an increase in marginal costs would not be absorbed by the providers, but rather would be fully passed through to the consumers.[617] Conversely, a pass-through rate of 0 percent would mean that consumers would not see a price increase due to the proposal. As noted above, the monetized estimates of additional Federal class settlements above amount to less than one dollar per account per year when averaged across markets (however, it is possible that the number is higher for some markets). Thus, even 100 percent pass-through of the monetized costs of additional Federal class settlements in every market would result in an increase in prices of under one dollar per account per year when averaged across all markets.

Determining the extent of pass-through involves evaluating a trade-off between volume of business and margin (the difference between price and marginal cost) on each customer served. Any amount of pass-through increases price, and thus lowers volume. A pass-through rate below 100 percent means that a firm's margin per customer is lower than it was before the provider had to incur the new cost. Economic theory suggests that, without accounting for strategic effects of competition, the pass-through rate ends up somewhere in between the two extremes of: (1) No pass-through (and thus completely preserving the volume at the expense of lowering margin) and (2) full pass-through (completely preserving the margin at the expense of lowering volume).[618] For a case of a monopolist with a linear demand function (a price increase of a dollar results in the same change in quantity demanded regardless of the original price level) and constant marginal cost (each additional unit of output costs the same to produce as the previous unit), the theory predicts a pass-through rate of 50 percent. The rate would be higher or lower depending on how demand elasticity and economies of scale change with higher prices and lower outputs.[619] To the extent that a provider's fixed costs change, economic theory indicates that the profit-maximizing response is not to pass that change onto prices.

Economic theory does not provide useful guidance about what the magnitude of the pass-through of marginal cost is likely to be with regard to the proposed rule. The Bureau believes that providers might treat the administrative costs as fixed. Whether the costs due to additional compliance are marginal depends on the exact form of this spending, but most examples discussed above would likely qualify as largely fixed. The Bureau believes that providers might treat a large fraction of the costs of additional class litigation as marginal: Payments to class members, attorney's fees (both defendant's and plaintiff's), and the cost of putative class cases that do not settle on a class basis. The extent to which these marginal costs are likely to be passed through to consumers cannot be reliably predicted, especially given the multiple markets affected. Empirical studies are mostly unavailable for the markets covered. Empirical studies for other products, mainly consumer package goods and commodities, do not produce a single estimate.[620]

The available pass-through estimates for the consumer financial products or services are largely for credit cards, where older literature found pass-through rates of close to 0 percent.[621] More recently, researchers have analyzed the effects of regulation that effectively imposed price ceilings on late payment and overlimit fees on credit cards and interchange fees on debit cards. These researchers, by-and-large, found evidence consistent with low to non-existent pass-through rates in these markets.[622] However, these

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[615] One of the SERs on the SBREFA Panel projected 2 to 6 hours of staff time. *See* SBREFA Panel Report, *supra* note 332 at 25.

[616] In some markets the provider does not have a direct relationship with the consumer, and thus the pass-through if any will be indirect. In other markets, providers are already charging a price at the usury limit, and thus would not be able to pass through any cost onto price.

[617] Even where providers pass on 100 percent of their costs, they may lose volume and thus experience lower profits. With regard to the proposal, however, in markets where arbitration agreements are extremely widespread, this would depend on the extent to which the market's aggregate demand curve is elastic. In other words, the entities' profits would decrease in proportion to the fraction of consumers who would stop buying the consumer financial products or services if most or all firms were to increase their prices at the same time. The Bureau is unaware of reliable estimates of this elasticity for the covered markets, with the exception of the credit card market, where such a loss would unlikely be significant given the likely modest per-consumer magnitude of the marginal cost increase. *See* David Gross & Nicholas Souleles, *Do Liquidity Constraints and Interest Rates Matter for Consumer Behavior? Evidence from Credit Card Data,* 149 Q. J. of Econ. 117 (2002). To the extent that credit cards and mortgages are indicative of other markets for consumer financial products and services, this effect is unlikely to be significant. *See, e.g.,* Andreas Fuster & Basit Zafar, *The Sensitivity of Housing Demand to Financing Conditions: Evidence from a Survey* (Fed. Reserve Board of N.Y.C., Staff Rept. No. 702, 2015), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2535912.*

[618] It is theoretically possible to have a pass-through rate of over 100 percent, even without accounting for strategic effects of competition. These strategic effects tend to drive up the pass-through rate even higher. *See, e.g.,* Jeremy Bulow & Paul Pfleiderer, *A Note on the Effect of Cost Changes on Prices,* 91 J. of Polit. Econ. 182(1983),); Rajeev Tyagi, *A Characterization of Retailer Response to Manufacturer Trade Deals,* 36 J. of Mktg. Res. 510 (1999); E. Glen Weyl & Michal Fabinger, *Pass-Through as an Economic Tool: Principles of Incidence under Imperfect Competition,* 121 J. of Pol. Econ. 528 (2013); Alexei Alexandrov & Sergei Koulayev, *Using the Economics of the Pass-Through in Proving Antitrust Injury in Robinson-Patman Cases,* 60 Antitrust Bull. 345 (2015).

[619] In other words, these rates depend on curvatures (concavity/convexity) of cost and demand functions.

[620] *See, e.g.,* RBB Economics, *Cost Pass-Through: Theory, Measurement, and Potential Policy Implications, A Report Prepared for the Office of Fair Trading,* (Feb. 2014), *available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320912/Cost_Pass-Through_Report.pdf.*

[621] *See* Lawrence Ausubel, *The Failure of Competition in the Credit Card Market,* 81 a.m. Econ. Rev. 50 (1991); *but see* Todd Zywicki, *The Economics of Credit Cards,* 3 Chap. L. Rev. 79 (2000); Daniel Grodzicki, *Competition and Customer Acquisition in the U.S. Credit Card Market* (Working Paper, 2015), *available at: https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=IIOC2015&paper_id=308.*

[622] *See* Sumit Agarwal, Souphala Chomsisengphet, Neale Mahoney & Johannes Stroebel, *Regulating Consumer Financial Products: Evidence from Credit Cards,* 130 Q. J. of Econ. 1 (2015); Benjamin Kay, Mark Manuszak & Cindy Vojtech, *Bank Profitability and Debit Card Interchange Regulation: Bank Responses to the Durbin Amendment* (Fed. Reserve Board, Working Paper No. 2014–77, 2014), *available at http://www.federalreserve.gov/econresdata/feds/2014/files/201477pap.pdf. But see* Todd Zywicki, Geoffrey Manne & Julian Morris, *Price Controls on*

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findings do not necessarily imply low pass-through in other markets that would be affected by the proposed rule, as providers in different markets are likely to face cost and demand curves of different curvatures.

More directly related to the proposal, the Study analyzed the effect on prices of several large credit card issuers agreeing to drop their arbitration agreements for a period of time as a part of a class settlement.[623] The Bureau did not find a statistically significant effect on the prices that these issuers charged subsequent to the contract changes, relative to other large issuers that did not have to drop their arbitration agreements. To the extent that this finding implies low or non-existent price increases, it could be due to several reasons other than a low general industry pass-through rate. For example, issuers may have priced as if the expected litigation exposure was a fixed cost or as if most of the cost was expected to be due to investment in more compliance (and would be treated as a fixed cost).[624] The result also might not be representative for other issuers.

C. Potential Benefits and Costs to Consumers

Potential Benefits to Consumers

Consumers would benefit from the proposed class rule to the extent that providers would have a larger incentive to comply with the law; from the class payments in any class settlement that occurs due to a provider not being able to invoke an arbitration agreement in a class proceeding; and, from any new compliance with the law they experience as a result of injunctive relief in a settlement or as a result of changes in practices that the provider adopts in the wake of the settlement to avoid future litigation.[625]

Consumer benefits due to providers' larger incentive to comply with the law are directly related to the aforementioned investments by providers to reduce class litigation exposure. Specifically, consumers would benefit from the forgone harm resulting from fewer violations of law. A full catalog of how all laws applicable to affected products benefit consumers when they are followed is far beyond the scope of this analysis. However, a few examples of types of benefits are offered. These benefits could take a form that is easier to monetize—for example, a credit card issuer voluntarily discontinuing (or not initiating) a charge to consumers for a service that generates $1 of benefit to consumers for every $10 paid by consumers; a depository ceasing to charge overdraft fees with respect to transactions for which the consumer has sufficient funds on deposit at the time the transaction settles to cover the transaction; or, a lender ceasing to charge higher rates to minority than non-minority borrowers. Or this could take a form that is harder to monetize—for example, a debt collector investing more in insuring that the correct consumers are called and in complying with various provisions limiting certain types of contacts and calls under the FDCPA and TCPA; or, a creditor taking more time to assure the accuracy of the information furnished to a credit reporting agency or to investigate disputes of that information.

Just as the Bureau is unable to quantify and monetize the investment that providers would undertake to lower their exposure to class litigation, the Bureau is unable to quantify and monetize the extent of the consumer benefit that would result from this investment, or particular subcategories of investment such as improving disclosures, improving compliance management systems, expanding staff training, or other specific activities. The Bureau requests comment on any representative data sources that could assist the Bureau in both of these quantifications.

Consumers would also benefit from class payments that they receive from settlements of additional class actions. According to the calculation above, this benefit would be on the order of $342 million per year for Federal class settlements, and an unquantified amount in State court settlements.[626]

Moreover, as noted above as well, the Bureau believes that there would also be significant benefits to consumers when settlements include in-kind and injunctive relief.[627] This relief can affect consumers beyond those receiving monetary remediation, including for example future customers of the provider or customers who fall outside of the class action but will stand to benefit from the injunctive relief. The Bureau is not aware of a consistent method of quantifying the total amounts of additional in-kind and injunctive relief from the approximately 103 additional Federal class settlements per year and a similar number of additional State class settlements.[628] The Bureau requests comment on whether the extent of this benefit, and the associated cost to providers, could be monetized, and if so how.

Potential Costs to Consumers

The cost to consumers is mostly due to the aforementioned pass-through by providers, to the extent it occurs, as discussed above. The Bureau does not repeat this general discussion here.

A second possible impact could occur if some providers decide to remove arbitration agreements entirely from their contracts, although there is no empirical basis to determine the proportion of providers that would do so. Assuming that some providers would remove these agreements, some consumers who can currently resort to arbitration for filing claims against providers would no longer be able to do so if the provider is unwilling to engage in post-dispute arbitration. The Bureau is unable to determine empirically whether individual arbitration is more beneficial to consumers than individual litigation, and if so the magnitude of the additional consumer benefit of arbitration.[629] However, given that the

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Payment Card Interchange Fees: The U.S. Experience, (Geo. Mason L. & Econ., Research Paper No. 14–18, 2014), *available at http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2446080.*

[623] *See generally* Study, *supra* note 2, section 10.

[624] *See* Study, *supra* note 2, section 10 (for other caveats to this analysis). *See also* Alexei Alexandrov, *Making Firms Liable for Consumers' Mistaken Beliefs: Theoretical Model and Empirical Applications to the U.S. Mortgage and Credit Card Markets,* Soc. Sci. Res. Network (Sept. 22, 2015).

[625] *See* Part VI for a related discussion.

[626] As noted above, the calculation depends on many assumptions, and thus there are many reasons for why this number might be considerably higher or considerably lower.

[627] In a market with transaction costs (not subject to the Coase Theorem), the value of behavioral relief to consumers could be either roughly equal, higher or lower that the value to firms.

[628] One easier quantification to make is in the class settlement analysis in Section 8 of the Study where 13 percent of the settlements featured behavioral relief and 6 percent featured in-kind relief. Accordingly, out of the additional 103 cases, a reasonable quantification is that 13 percent will feature behavioral relief and 6 percent will feature in-kind relief. As noted above, while the Study quantified $644 million of in-kind relief, that number is included in relief, but not in payments in the Study, and the Bureau continues to follow this approach here, both for the calculation of costs to providers and benefits to consumers. Similarly, as noted above, the Study did not include promises to obey the law going forward as specific enough to count toward behavioral relief, suggesting that injunctive relief overall is likely higher.

[629] *See* Study, *supra* note 2, section 6 at 2. Existing empirical evidence compiled by scholars prior to the Study mainly concerns employment, franchisee, and security arbitrations (note that FINRA rules require an option of class action in any arbitration agreement). The Bureau does not believe that these data are necessarily applicable to consumer financial products and services. Even that evidence is also largely inconclusive. *See, e.g.,* Theodore Eisenberg & Elizabeth Hill, *Arbitration and Litigation of Employment Claims: An Empirical Comparison,* 58 Disp. Res. J. 44 (2004) (finding no statistical differences in a variety of outcomes between individual arbitration and individual litigation). *See also* Peter Rutledge, *Whither Arbitration?,* 6 Geo. J. of L. & Pub. Pol'y 549 at 557–9, (2008) (discussing several studies that compared

Study found only several hundred individual arbitrations per year involving consumer financial products or services, the Bureau believes that the magnitude of consumer benefit, if any, of individual arbitration over individual litigation would need to be implausibly large for some, or even all, providers that eliminated their arbitration agreements to make a noticeable difference to consumers in the aggregate.

In short, if a consumer initiates a formal dispute relating to a consumer financial product or service, it is possible that the consumer would fare somewhat better in individual arbitration than in individual litigation.[630] However, in practice, this comparison is not material for the analysis of consumer benefits and costs since consumers do not initiate formal individual disputes involving consumer financial products or services in notable numbers in any forum: The Bureau documented hundreds of individual arbitrations versus millions of consumers receiving relief through class actions.[631]

Moreover, the stakeholder feedback that the Bureau has received so far suggests that if any provider dropped arbitration agreements entirely, the decision could be a result of the provider not finding it cost-effective to support a dual-track system of litigation (on a class or putative class basis) and individual arbitrations. However, the Study shows that providers often do not invoke arbitration agreements in individual lawsuits,[632] and thus providers are already operating in such a dual-track system. Thus, the Bureau lacks sufficient information to believe that most, or even any, providers would indeed drop arbitration agreements altogether rather than adopting the Bureau's language if the rule is finalized as proposed. The Bureau requests comment on both providers' incentives to drop arbitration agreements altogether and on quantification of consumer benefit or cost of individual arbitration over and above individual litigation.

As discussed above, at least some providers might decide that a particular feature of a product makes the provider more susceptible to class litigation, and therefore the provider would decide to remove that feature from the product. A provider might make this decision even if that feature is actually beneficial to consumers and does not result in legal harm to consumers. In this case, consumers would incur a cost due to the provider's over-deterrence with respect to this particular decision. The Bureau is not aware of any data showing this theoretical phenomenon (over-deterrence) to be prevalent among providers who currently do not have an arbitration agreement or likely among providers who would be required to forgo using their arbitration agreement to block class actions. The Bureau requests comment on the extent of this phenomenon in the context of the proposed rule, and it specifically requests data and suggestions about how to quantify both the prevalence of this phenomenon and the magnitude of consumer harm if the phenomenon exists.

D. Impact on Depository Institutions With No More Than $10 Billion in Assets

The prevalence of arbitration agreements for large depository institutions is significantly higher than that for smaller depository institutions.[633] Moreover, while more than 90 percent of depository institutions have no more than $10 billion in assets, about one in five of the class settlements with depository institutions in the Study involved depository institutions under this threshold (approximately one class settlement per year). The magnitude of these settlements, measured by payments to class members, was also considerably smaller than settlements with institutions above the threshold: The aggregated documented payments to class members from all cases that involve depository institutions with less than $10 billion in assets was under $2 million over the five years analyzed in the Study.

Thus, using the same method discussed above to estimate additional class settlements (and putative class cases) among depository institutions with no more than $10 billion in assets suggests that the proposed rule would have practically no effect that could be monetized. Specifically, the calculation predicts approximately one additional Federal class settlement and about three putative Federal class cases over five years involving depositories below the $10 billion threshold if the proposed rule is finalized.

However, there might be other ways in which impacts on smaller depository institutions, and smaller providers in general, would differ from impacts on larger providers. The Bureau describes some of these in this Section 1022(b)(2) Analysis.

One possibility might be that the managers of smaller providers (depository institutions or otherwise) are sufficiently risk averse, or generally sensitive to payouts, such that putative class actions have an *in terrorem* effect. To the extent this occurs, small providers may settle any such additional lawsuits for more than the expected value of an award if the case were likely to be certified as a class case and go to trial. However, the Study found that it is most common for class action settlements to be reached before a court has certified a case as a class case. Moreover, as noted above, the amount of any such settlement should be lower for smaller providers given the smaller magnitude of the case and the lower number of consumers affected. In addition, as noted above, the Bureau estimates the number of additional class lawsuits in general against small depository institutions to be extremely low. In particular, the Bureau believes that out of the 312 cases (over five years) that are used for the estimates of the impact on the number of Federal class settlements, about one Federal class settlement per year involved smaller institutions (either depository or non-depositories) paying over $1,000,000 to class members.

There is a significant amount of academic finance literature suggesting that management should not be risk averse, unless the case involves a possibility of a firm going bankrupt in case of a loss.[634] However, management of smaller providers, regardless of whether they are depository institutions, might be more risk averse because their shareholders or owners might be less diversified.

The bargaining theory literature generally suggests that the party with deeper pockets and relatively less at stake will be the party that gets the most out of the settlement.[635] It follows that smaller defendants might fare worse in

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outcomes in individual arbitration and individual litigation, typically showing comparable outcomes in the two fora). The Bureau notes that these and other similar comparative studies should be interpreted carefully for reasons stated in the Study. *See* Study, *supra* note 2, section 6 at 2–5.

[630] Similarly, it is possible that the consumer would fare somewhat worse in individual arbitration than in individual litigation.

[631] If anything, the Study shows considerably more individual litigation (in Federal and in small claims courts) than individual arbitration. *See generally,* Study, *supra* note 2, sections 5 and 6.

[632] Study, *supra* note 2, section 1 at 15.

[633] *See generally* Study, *supra* note 2, sections 2.

[634] *See, e.g.,* Clifford Smith & René Stulz, *The Determinants of Firms' Hedging Policies,* 20 J. Fin. & Quantitative Analysis 391 (1985).

[635] More generally, economic theory suggests that the side that is more patient is going to get a better deal, all else being equal. For the canonical economic model of bargaining, *see* Ariel Rubinstein, *Perfect Equilibrium in a Bargaining Model,* 50 Econometrica 97 (1982).

terms of the settlements relative to their larger peers, all else being equal. However, from anecdotal evidence, the Bureau believes that, if the smaller defendants are sued at all, they are likely to be sued by smaller law firms. This could equalize bargaining power (as a smaller law firm might not be able to afford to be too aggressive even in a single proceeding) or tilt bargaining power more to a smaller defendant's side relative to their larger peers defending against larger law firms.

Finally, given the considerably lower frequency of class litigation for smaller providers, it is possible that it is not worth the cost for smaller providers to invest in lowering class litigation exposure. This might also explain the relatively lower frequency of arbitration agreement use by smaller depositories.

E. Impact on Rural Areas

Rural areas might be differently impacted to the extent that rural areas tend to be served by smaller providers, as discussed above with regard to depository institutions with less than $10 billion in assets and below with regard to providers of all types that are below certain thresholds for small businesses. In addition, markets in rural areas might also be less competitive. Economic theory suggests that less competitive markets would have lower pass-through with all else being equal; therefore, if there were any price increase due to the proposed rule, it would be lower in rural areas.[636]

F. Impact on Access to Consumer Financial Products and Services

Given hundreds of millions of accounts across affected providers and the numerical estimates of costs above, the expected additional marginal costs due to additional Federal class settlements to providers are likely to be negligible in most markets. Each of the product markets affected has hundreds of competitors or more. Thus, the Bureau does not believe that this proposed rule would result in a noticeable impact on access to consumer financial products or services.

The Bureau does not believe that access to consumer financial products or services would be diminished due to effects on providers' continuing viability or, as discussed below in Part IX, due to effects on providers' access to credit to facilitate the operation of their businesses. It is possible that consumers might experience temporary access concerns if their particular provider was sued in a class action. These concerns might become permanent if such litigation significantly depleted the provider's financial resources, potentially resulting in the provider exiting the market.

Of course, the incentive for a class counsel to pursue a case to the point where it would cause a defendant's bankruptcy is low because this would leave little, or no, resources from which to fund a remedy for consumers in a class settlement or any fees for the class counsel and could make the process longer. In addition, the potential consumers of this provider presumably have the option of seeking this consumer financial product or service from a different company that is not facing a class action, and thus a bankruptcy scenario is substantially more of an issue for the particular provider affected than for the provider's consumers. Moreover, especially given the low prevalence of cases against smaller providers outlined above and the amounts of documented payments to class members, the Bureau does not believe that out of the Federal class settlements analyzed in the Study, many settlements threatened the continued existence of the defendant and the resulting access to credit.

IX. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[637] These analyses must "describe the impact of the proposed rule on small entities." [638] An IRFA or FRFA is not required if the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.[639] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.[640]

The Bureau is not certifying that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Accordingly, the Bureau convened and chaired a Small Business Review Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) to consider the impact of the proposed rule on small entities that would be subject to that rule and to obtain feedback from representatives of such small entities. The Small Business Review Panel for this proposed rule is discussed in the SBREFA Panel Report.

Among other things, this IRFA estimates the number of small entities that will be subject to the proposed rule and describes the impact of the proposed rule on those entities. Throughout this IRFA, the Bureau draws on the Section 1022(b)(2) Analysis above.

Despite not certifying that the proposed rule would not have a significant economic impact on a substantial number of small entities at this time, the Bureau believes that the arguments and calculations outlined both in the Section 1022(b)(2) Analysis, as well as the arguments and calculations that follow, strongly suggest that the proposed rule would indeed not have a significant economic impact on a substantial number of small entities in any of the covered markets. The Bureau is requesting comment on the assumptions and methodology used, and on potential certification if the proposed rule is finalized.

In preparing this proposed rule and this IRFA, the Bureau has carefully considered the feedback from the SERs participating in the SBREFA process and the findings and recommendations in the SBREFA Panel Report. The Section-by-Section analysis of the proposed rule, above in Part VII, and this IRFA discuss this feedback and the specific findings and recommendations of the Small Business Review Panel, as applicable. The SBREFA process provided the Small Business Review Panel and the Bureau with an opportunity to identify and explore opportunities to minimize the burden of the proposed rule on small entities while achieving the proposed rule's purposes. As in other Bureau's rulemakings, it is important to note, however, that the Small Business Review Panel prepared the SBREFA Panel Report at a preliminary stage of the proposal's development and that the

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[636] *See* Weyl and Fabinger, *supra* note 618 and Alexandrov and Koulayev, *supra* note 618.

[637] 5 U.S.C. 601, *et seq.*

[638] 5 U.S.C. 603(a). For purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A "small business" is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[639] 5 U.S.C. 605(b).

[640] 5 U.S.C. 609.

SBREFA Panel Report—in particular, the Small Business Review Panel's findings and recommendations—should be considered in that light. The proposed rule and this IRFA reflect further consideration, analysis, and data collection by the Bureau.

Under RFA section 603(a), an IRFA "shall describe the impact of the proposed rule on small entities."[641] Section 603(b) of the RFA sets forth the required elements of this IRFA. Section 603(b)(1) requires this IRFA to contain a description of the reasons why action by the agency is being considered.[642] Section 603(b)(2) requires a succinct statement of the objectives of, and the legal basis for, the proposed rule.[643] This IRFA further must contain a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.[644] Section 603(b)(4) requires a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record.[645] In addition, the Bureau must identify, to the extent practicable, all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.[646] Furthermore, the Bureau must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.[647] Finally, as amended by the Dodd-Frank Act, RFA section 603(d) requires that this IRFA include a description of any projected increase in the cost of credit for small entities, a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities (if such an increase in the cost of credit is projected), and a description of the advice and recommendations of representatives of small entities relating to the cost of credit issues.[648]

1. Description of the Reasons Why Agency Action Is Being Considered and Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

As the Bureau outlined in the SBREFA Panel Report and discussed above, the Bureau is considering a rulemaking because it is concerned that consumers do not have sufficient opportunity to obtain remedies when they are legally harmed by providers of consumer financial products and services, because arbitration agreements effectively block consumers from participating in class proceedings. The Bureau is also concerned that by blocking class actions, arbitration agreements reduce deterrent effects and compliance incentives in connection with the underlying laws. Finally, the Bureau is concerned about the potential for systemic harm if arbitration agreements were to be administered in biased or unfair ways. Accordingly, the Bureau is considering proposals that would: (1) Prohibit the application of certain arbitration agreements regarding consumer financial products or services as to class litigation; and (2) require submission of arbitral claims, awards, and two other categories of documents to the Bureau. This proposed rulemaking is pursuant to the Bureau's authority under sections 1022(b) and (c) and 1028 of the Dodd-Frank Act. The latter section directs the Bureau to study pre-dispute arbitration agreements in connection with the offering or providing of consumer financial products or services and authorizes the Bureau to regulate their use if the Bureau finds that certain conditions are met.[649]

2. Description and, Where Feasible, Provision of an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

As noted in the SBREFA Panel Report, the Panel identified 22 categories of small entities that may be subject to the proposed rule. These were later narrowed (see discussion and table below with estimates of the number of entities in each market). The NAICS industry and SBA small entity thresholds for these 22 categories are the following:

TABLE 2—SBA SMALL ENTITY THRESHOLDS

NAICS description	NAICS code	SBA small business threshold
All Other Nondepository Credit Intermediation	522298	$38.5m in revenue.
All Other Professional, Scientific, and Technical Services	541990	$15m in revenue.
Collection Agencies	561440	$15m in revenue.
Commercial Banking	522110	$550m in assets.
Commodity Contracts Dealing	523130	$38.5m in revenue.
Consumer Lending	522291	$38.5m in revenue.
Credit Bureaus	561450	$15m in revenue.
Credit Card Issuing	522210	$550m in assets.
Direct Life Insurance Carriers	524113	$38.5m in revenue.
Direct Property and Casualty Insurance Carriers	524126	1500 employees.
Financial Transactions Processing, Reserve, and Clearinghouse Activities	522320	$38.5m in revenue.
Mortgage and Nonmortgage Loan Brokers	522310	$7.5m in revenue.
Other Activities Related to Credit Intermediation	522390	$20.5m in revenue.
Other Depository Credit Intermediation	522190	$550m in assets.
Passenger Car Leasing	532112	$38.5m in revenue.
Real Estate Credit	522292	$38.5m in revenue.
Sales Financing	522220	$38.5m in revenue.
Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	532120	$38.5m in revenue.
Used Car Dealers	441120	$25m in revenue.
Utilities (including Electric Power Generation, Transmission, and Distribution of Electric Power, Natural Gas, Water/Sewage, and other systems).	221	between $15–$27.5m in revenue or 250–1000 employees.
Wired Telecommunications Carriers	517110	1500 employees.

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[641] 5 U.S.C. 603(a).

[642] 5 U.S.C. 603(b)(1).

[643] 5 U.S.C. 603(b)(2).

[644] 5 U.S.C. 603(b)(3).

[645] 5 U.S.C. 603(b)(4).

[646] 5 U.S.C. 603(b)(5).

[647] 5 U.S.C. 603(b)(6).

[648] 5 U.S.C. 603(d)(1); Dodd-Frank section 1100G(d)(1).

[649] 12 U.S.C. 5518(b).

TABLE 2—SBA SMALL ENTITY THRESHOLDS—Continued

NAICS description	NAICS code	SBA small business threshold
Wireless Telecommunications Carriers (except Satellite)	517210	1500 employees.

For purposes of assessing the impacts of the proposals under consideration on small entities, "small entities" are defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions that would be subject to the proposals under consideration. A "small business" is defined by the SBA Office of Size Standards for all industries through the NAICS.

To arrive at the number of entities affected, the Bureau began by creating a list of markets that would be covered if the proposals under consideration were to be adopted. The Bureau assigned at least one, but often several, NAICS codes to each market. For example, while payday and other installment loans are provided by storefront payday stores (NAICS 522390), they are also provided by other small businesses, such as credit unions (NAICS 522120). The Bureau estimated the number of small firms in each market-NAICS combination (for example, storefront payday lenders in NAICS 522390 would be such a market-NAICS combination), and then the Bureau added together all the markets within a NAICS code if there is more than one market within a NAICS code, accounting for the potential overlaps between the markets (for example, probably all banks that provide payday-like loans also provide checking accounts, and the Bureau does not double-count them, to the extent possible given the data).

The Bureau first attempted to estimate the number of firms in each market-NAICS combination by using administrative data (for example, Call Reports that credit unions have to file with the NCUA). When administrative data was not available, the Bureau attempted to estimate the numbers using public sources, including the Bureau's previous rulemakings and impact analyses. When neither administrative nor other public data was available, the Bureau used the Census's NAICS numbers. The Bureau estimated the number of small businesses according to the SBA's size standards for NAICS codes (when such data was available).[650] When the data was insufficient to precisely estimate the number of businesses under the SBA threshold, the Bureau based its estimate for the number of small businesses on the estimate that approximately 95 percent of firms in finance and insurance are small.[651]

NAICS numbers were taken from the 2012 NAICS Manual, the most recent version available from the Census Bureau. The data provided employment, average size, and an estimate of the number of firms for each industry, which are disaggregated by a six-digit ID. Other industry counts were taken from a variety of sources, including other Bureau rulemakings, internal Bureau data, public data and statistics, including published reports and trade association materials, and in some cases from aggregation Web sites. For a select number of industries, usually NAICS codes that encompass both covered and not covered markets, the Bureau estimated the covered market in this NAICS code using data from Web sites that aggregate information from multiple online sources. The reason the Bureau relied on this estimate instead of the NAICS estimate is that NAICS estimates are sometimes too broad. For example, the NAICS code associated with virtual wallets includes dozens of other small industries, and would overestimate the actual number of firms affected by an order of magnitude or more.

Although the Bureau attempted to account for overlaps wherever possible, a firm could be counted several times if it participates in different industries and was counted separately in each data source. While this analysis removes firms that were counted twice using the NAICS numbers, some double counting may remain due to overlap in non-NAICS estimates. For the NAICS codes that encompass several markets, the Bureau summed the numbers for each of the market-NAICS combinations to produce the table of affected firms.

In addition to estimating the number of providers in the affected markets, the Bureau also estimated the prevalence of arbitration agreements in these markets. The Bureau first attempted to estimate the prevalence of arbitration agreements in each market using public sources. However, this attempt was unsuccessful.[652] For the markets covered in Section 2 of the Study that provided data on prevalence of arbitration agreements, the Bureau uses the numbers from the Study. The Bureau contacted trade associations to obtain supplemental data for the markets that were not covered in Section 2 of the Study.[653]

The table below sets forth potentially affected markets (and the associated NAICS codes) in which it appears reasonably likely that more than a few small entities use arbitration agreements. Some affected markets (and associated NAICS codes) are not listed because the number of small entities in the market using arbitration agreements is likely to be insignificant. For example, the Bureau did not list convenience stores (NAICS 445120). While consumers can cash a check at some grocery or convenience stores, the Bureau does not believe that consumers generally sign contracts that contain arbitration agreements with grocery or convenience stores when cashing checks; indeed, this is even less likely for check guarantee (NAICS 522390) and collection (NAICS 561440). For the same reason, currency exchange providers (NAICS 523130) are not listed on the table. The Bureau also did not list department stores (NAICS 4521) because the Bureau does not believe small department stores are typically involved in issuing their own credit cards, rather than partnering with an issuing bank that issues cards in the name of the department store.

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[650] The Bureau also used data from the Census Bureau, including the Census Bureau's Statistics of U.S. Businesses.

[651] *See* Small Business Administration Office of Size Standards, *SBA's Size Standards Analysis: An Overview on Methodology and Comprehensive Size Standards Review*, Presentation of Sharma R. Khem at 4 (2011), *available athttp://www.gtscoalition.com/wp-content/uploads/2011/07/Size-Stds-Presentation_Dr.-Sharma-SBA.pdf.*

[652] The Bureau attempted to develop a methodology for sampling contracts on the Internet. The methodology involved attempting to sample the contracts of 20 businesses from randomly-selected states and different levels of Web search relevance (to alleviate selection biases). However, providers generally do not provide their contracts or terms and conditions online. Even when some contracts are available online in a specific market, providers that provided such information are usually large, national corporations that operated in multiple states. The lack of provider-specific revenue and employment information also makes it hard to determine which of the sampled businesses are small according to the SBA threshold. After attempting this methodology for several markets, the Bureau decided to proceed by contacting trade associations instead. The Bureau attempted the sampling method for the following markets: Currency Exchange, Other Money Transmitters/Remittances, Telephone (Landline) Services, Cable Television. The Bureau also started work on a few other markets before determining that the results are unlikely to be sufficiently representative for the purposes of this analysis.

[653] The Bureau obtained the necessary PRA approval from OMB for the survey. The Bureau contacted national trade associations with a history of representation of providers in the relevant markets. The questions the Bureau posed related to the prevalence of arbitration agreements among providers in this market generally, as opposed to among the members of the trade association. The Bureau uses the prevalence numbers from the Study for checking/deposit accounts, credit cards, payday loans, prepaid cards, private student loans, and wired and wireless telecommunication providers. All other prevalence estimates used in this section and in the Section 1022(b)(2) Analysis are based on this survey of trade associations. In each such market (represented by a separate row in the table below), except credit monitoring and providers of credit reports, we relied on numbers from one trade association for that market. For credit monitoring and providers of credit reports, we received supplemental information from a trade association that we did not survey that lead us to adjust the estimate by averaging the two estimates. For the markets covered by the Study's prevalence analysis, the Bureau adjusted the numbers to fit into the four choices provided in the survey: 0–20 percent, 20–50 percent, 50–80 percent, and 80–100 percent. The prevalence column in the tables in this section and in the Section 1022(b)(2) Analysis provide the midpoint estimate (for example, 10 percent if the answer was 0–20 percent).

Other notable exceptions were Other Depository Credit Intermediation (NAICS 522190) and attorneys who collect debt (NAICS 541110). The Bureau believes that for these codes virtually all providers that are engaged in these activities are already reporting under other NAICS codes (for example, Commercial Banking, NAICS 52211, or collection agencies, NAICS 561440).

In addition, the proposed rule would apply to mortgage referral providers for whom referrals are their primary business. For example, the Bureau estimates that there are 7,007 entities classified as mortgage and nonmortgage brokers (NAICS 522310), 6,657 of which are small.[654] However, the Bureau believes that arbitration agreements are not prevalent in the consumer mortgage market. With respect to brokering of credit more broadly, the Bureau also believes that some credit lead generators may be primarily engaged in the business of brokering and would be affected by the proposed rule. The Bureau lacks data on the number of such businesses and the extent to which they are primarily engaged in brokering. The Bureau therefore requests this data and data on the use of contracts and on the prevalence of arbitration agreements by these providers.

Merchants are not listed in the table because merchants generally would not be covered by the proposal, except in limited circumstances. For example, the Bureau believes that most types of financing consumers use to buy nonfinancial goods or services from merchants is provided by third parties other than the merchant or, if the merchant grants a right of deferred payment, this is typically done without charge and for a relatively short period of time. For example, a provider of monthly services may bill in arrears, allowing the consumer to pay 30 days after services are rendered each month. Thus the Bureau believes that merchants rarely offer their own financing with a finance charge, or in an amount that significantly exceeds the market value of the goods or services sold.[655] In those rare circumstances (for example, acting as a TILA creditor due to lending with a finance charge), then the merchants would be covered by the proposal in those transactions (unless, in the case of offering credit with a finance charge, the merchant is a small entity and meets the other requirements of Dodd-Frank section 1027(a)(2)(D)). The Bureau lacks data on how frequently merchants engage in such transactions, whether in the education, health, or home improvement sectors, among others, and on how often pre-dispute arbitration agreements may apply to such transactions. The Bureau requests comment and data on the frequency of these transactions, by industry.

Similarly, the Bureau does not list utility providers (NAICS 221) because when these providers allow consumers to defer payment for these providers' services without imposing a finance charge, this type of credit is not subject to the proposed rule. In some cases, utility providers may engage in billing the consumer for charges imposed by a third-party supplier hired by the consumer. However, government utilities providing these services to consumers who are located in their territorial jurisdiction would be exempt and, with respect to private utility providers providing these services, the Bureau believes that these private utility providers' agreements with consumers, including their dispute resolution mechanisms, are generally regulated at a State or local level. The Bureau is not aware that those dispute resolution mechanisms provide for mandatory arbitration.[656]

Further, the proposal would apply to extensions of credit by providers of whole life insurance policies (NAICS 524113) to the extent that these companies are ECOA creditors and that activity is not the "business of insurance" under the Dodd-Frank section 1002(15)(C)(i) and 1002(3) and arbitration agreements are used for such policy loans. However, it is unlikely that a significant number of such providers would be affected because a number of state laws restrict the use of arbitration agreements in insurance products and, in any event, it is possible that the loan feature of the whole life policy could be part of the "business of insurance" depending on the facts and applicable law.[657]

The Bureau also does not believe that a significant number of new car dealers offer or provide consumer financial products or services that render these dealers subject to the Bureau's regulatory jurisdiction. As a result, new car dealers (NAICS 44111) and passenger car leasing companies (NAICS 532112) are not included in the table below; rather, the table covers dealer portfolio leasing and lending with the used car dealer category (NAICS 441120) and indirect auto lenders with the sales financing category (NAICS 522220).

In addition, the Bureau does not believe that it is common for commodities merchants subject to CFTC jurisdiction to extend credit to consumers as defined by Regulation B.[658]

The Bureau does not account for various types of entities that are indirectly affected (and thus would likely not need to change their contracts) and for which the Bureau did not find any Federal class settlements in the Study (and thus would not be significantly affected by additional class litigation exposure). These entities include, for example, billing service providers for providers of merchant credit (third-party servicers NAICS 522390).

Similarly, the Bureau is unaware of the number of software developers

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[654] NAICS 522292 is similarly-excluded from estimates.

[655] However, the Bureau includes buy-here-pay-here automobile dealers in the table below.

[656] The Bureau notes, for example, that in some situations, such as some consumer disputes heard by state utility regulators, consumers may be required to submit disputes to governmental administrative bodies prior to going to court. If courts review the determinations of those administrative bodies as agency administrative action, rather than an arbitral award, then the Bureau does not believe that processes such as these would be considered "arbitration" under proposed § 1040.2(d).

[657] *See, e.g.*, Kan. Stat. Ann. sec. 5–401 (2015). These State laws involve interplay between the FAA and the McCarran-Ferguson Act, 15 U.S.C. 6701 *et seq.*

[658] *See* U.S. Dept. of Treasury, Blueprint for a Modernized Financial Regulatory Structure, at 116 (2008), available at *https://www.treasury.gov/press-center/press-releases/Documents/Blueprint.pdf* ("In general, margin is a very different concept in the futures and securities worlds. In the securities context, margin means a minimum amount of equity that must be put down to purchase securities on credit, while in the futures context margin means a risk-based performance bond system which acts much like a security deposit.").

(NAICS codes 511210 and 541511) that provide covered consumer financial products or services with arbitration agreements directly to consumers (such as payment processing products) that do not report in the NAICS codes listed either above or in the table below. The Bureau believes that the number of such software developers is low; however, the Bureau requests comment on this issue.

Table 3: Estimated Number of Affected Entities by NAICS Code

Description	**NAICS**	**Markets Affected in This NAICS**	**Businesses**	**SBREFA Small Businesses**	**SBA Small Business Threshold**	**Percent Estimated to Use Arbitration Agreements**[655]	**Estimated Midpoint of Businesses Using Arbitration Agreements**
All Other Nondepository Credit Intermediation	522298	Other Personal Loans, Pawnshops[656]	10,300	10,086	$38.5m in revenue	0-20%	1,009
All Other Professional, Scientific, and Technical Services	541990	Credit Counseling	726	715	$15m in revenue	50-80%	465
Collection Agencies	561440	Debt Collectors	4,500	4,356	$15m in revenue	100%	4,356
Commercial Banking	522110	Depository Institutions, Student Loan Servicing	13,303	11,608	$550 million in assets	0-20%	1,161
Consumer Lending	522291	P2P Lending, Other Personal Loans, Student Loan Issuance - Private, Third Party Payment Processing, Consumer Lending, Commercial Banking	6,620	6,416	$38.5m in revenue	80-100%	5,775
Credit Bureaus and Direct Property and Casualty Insurance Carriers	561450 and 524126	Credit Reporting Agencies,[657] Credit Monitoring, Homeowners Insurance[658]	3,383	3,063	$550m in assets	0-20%	306
Credit Card Issuing	522210	Credit Cards, Consumer Lending	444	422	$550m in assets	0-20%	42
Financial Transactions Processing, Reserve, and Clearinghouse Activities	522320	Other Personal Loans, Other Money Transmitters / Remittances, Prepaid Cards, Payment Processing/Transfers, ACH Systems, Third Party Financial Service Providers, Mobile Payments	7,380	6,880	$38.5m in revenue	20-50%	2,408
Other Activities Related to Credit Intermediation	522390	Payday Loan, Tribal Lending, Refund Anticipation Check, Deposit Advance, Servicing (non-mortgage), Virtual Currency, Money Order, Traveler`s Checks, Mobile Wallets, Debt Settlement/Relief, Marketplace Loans, Tax Lending, Lump Sum Payment Company (payment advance)	11,023	10,812	$20.5m in revenue	80-100%	9,731
Sales Financing and Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	522220 and 532120	Installment Lending, Auto Title Lending, Auto Finance, Truck/Boat/RV Finance	10,703	10,056	$38.5m in revenue	80-100%	9,050
Used Car Dealers	441120	Buy-Here, Pay-Here Auto Dealers[659]	9,156	8,966	$25m in revenue	80-100%	8,069
Wired and Wireless (except Satellite) Telecommunications Carriers	517110	Telephone - landline, Cable Television, Cable Providers (First Party),[660] Cell Phones[661]	7,756	7,528	1500 employees	80-100%	6,775

3. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report Reporting Requirements

The providers that use arbitration agreements would have to change their contracts to state that the arbitration agreements cannot be used to block class litigation. The Bureau believes that, given that the Bureau is specifying the language that must be used, this can be accomplished in minimal time by compliance personnel, who do not have to possess any specialized skills, and in particular who do not require a law degree.[659] Moreover, the Bureau believes that to the extent small covered entities use contracts from form providers, that task might be done by the providers themselves, requiring a simple check by the small provider's compliance staff to ensure that this has indeed been done. See the last column in the table above for the Bureau's estimate of the number of small providers that use arbitration agreements.

Additionally, as discussed above, debt buyers and other providers who become parties to existing contracts with pre-dispute arbitration agreements that do not contain the required language would be subject to the ongoing requirements of proposed § 1040.4(a)(2), which would require them to issue contract amendments or notices when they become party to a pre-existing contract that does not include the proposed mandated language. As discussed above, the Bureau believes that this cost and the skills required to satisfy this requirement would also be minimal since many of these providers typically send out notices for FDCPA purposes to consumers whose contracts these providers just acquired.

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[659] The Bureau is aware that many small providers do not employ dedicated compliance staff, and uses the term broadly to denote any personnel who engage in compliance activities.

The proposed rule also includes a reporting requirement when covered entities exercise their arbitration agreements in individual lawsuits and in several other circumstances. Given the small number of individual arbitrations in the Study, the Bureau believes that there would be at most a few hundred small covered entities affected by this requirement each year, and most likely considerably fewer since most defendants that participated in arbitrations analyzed by the Study were large repeat players.[660] Each instance of reporting consists of sending the Bureau already existing documents, potentially redacting specified categories of personally identifiable information pursuant to proposed rule. As discussed above, the Bureau believes that fulfilling the requirement would not require any specialized skills and would require minimal time.

The Bureau requests comment on whether there are any additional costs or skills required to comply with reporting, recordkeeping, and other compliance requirements of the proposed rule that the Bureau had not mentioned here. As noted in its Section 1022(b)(2) Analysis above, the Bureau believes that the vast majority of the proposed rule's impact is due to additional exposure to class litigation and to any voluntary investment (spending) in reducing that exposure that providers might undertake. The Bureau believes that neither of these categories is a reporting, recordkeeping, or other compliance requirement; however, the Bureau discusses them below.

The costs and types of additional investment to reduce additional exposure to class litigation and the components of the cost of additional class litigation itself are described above in the Section 1022(b)(2) Analysis. As noted above, it is difficult to quantify how much all covered providers, including small entities, would invest in additional compliance; that applies to all covered providers.

With respect to additional class litigation exposure, using the same calculation as in the Section 1022(b)(2) Analysis, limited to providers below the SBA threshold for their markets,[661] the Bureau estimates that the proposed rule would result in about 25 additional Federal class settlements, and in those cases, an additional $3 million paid out to consumers, an additional $2 million paid out in plaintiff's attorney's fees, and an additional $1 million for defendant's attorney's fees and internal staff and management time per year. The Bureau also estimates 121 additional Federal cases filed as class litigation that would end up not settling on class basis, resulting in an additional $2 million in fees per year. These aggregate $8 million per year for Federal class litigation should be juxtaposed with an estimated 51,000 providers below the SBA thresholds that use arbitration agreements, resulting in well under a 1 percent chance per year of those entities being subject to a putative Federal class litigation, a much lower chance of any of those cases resulting in a class settlement, and an expected cost of about $200 per year from Federal class cases per entity.

While the expected cost per provider that the Bureau can monetize is about $200 per year from Federal class cases, these costs would not be evenly distributed across small providers. In particular, the estimates above suggest that about 25 providers per year would be involved in an additional Federal class settlement—a considerably higher expense than $200 per year, as noted in the Section 1022(b)(2) Analysis above. In addition, the additional Federal cases filed as class litigation that would end up not settling on class basis (121 per year according to the estimates above) are also likely to result in a considerably higher expense that $200. However, the vast majority of the 51,000 providers would not experience any of these effects.

As discussed above, these entities would also face increased exposure to state class litigation. While the Study's Section 6 reports similar numbers for State and Federal cases, it is likely that the State to Federal class litigation ratio is higher for small covered entities to the extent that they are more likely to serve consumers only in one State. However, as discussed above, the Bureau believes that State class litigation is also likely to generate lower costs than Federal litigation. The Bureau believes that these calculations strongly suggest that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA; however, the Bureau requests comment on that preliminary conclusion.

The Bureau notes that the estimates are higher for small debt collectors than for other categories: Small debt collectors account for 22 of the 25 Federal settlements estimated above for small providers overall, and $5 million (out of $8 million for small providers) in costs combined. With about 4,400 debt collectors below the SBA thresholds, the estimates suggest a roughly 2 percent chance per year of being subject to an additional putative Federal class litigation, a lower than 1 percent chance of that resulting in a Federal class settlement, and an expected cost of about $1,100 per year from these additional settlements. The same State class litigation assumptions outlined above apply to smaller debt collectors.

As evident from the data and from feedback received during the SBREFA process, providers that are debt collectors might be the most affected relative to providers in other markets, despite the fact that debt collectors do not enter into arbitration agreements directly and already frequently collect on debt without an arbitration agreement in the original contract. However, for the reasons described above, the Bureau believes it is unlikely that class settlement amounts would in fact drive companies out of business. Indeed, as discussed above, debt collectors already face class litigation exposure in connection with a significant proportion of debt they collect. Much of that debt comes from creditors that do not have arbitration agreements, and even where the credit contract includes an arbitration agreement, collectors are not always able to invoke the agreements successfully.

4. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

Several other Federal laws and regulations address the use of arbitration agreements. For example, arbitration agreements that apply to class litigation have been prohibited in securities contracts between broker dealers and their customers since 1992.[662] The Military Lending Act and its implementing regulations, which were recently expanded by the Department of Defense to reach most forms of credit accessed by servicemembers and their families, prohibit arbitration agreements in consumer credit contracts with certain covered servicemembers or their dependents.[663]

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[660] *See* Study, *supra* note 2, section 5 at 59.

[661] The Bureau attempted to classify defendants of the class settlements from the Study on whether they meet the SBA threshold for a small business in the defendant's market. Some of the markets were relatively easy to classify; for example, the Bureau has the data on depository institutions' assets and that is the only data necessary to determine whether depository institutions are SBA small. Other markets were considerably more difficult, in particular debt collectors. The Bureau used trade publications and internal expertise to the extent possible to classify debt collectors into large and small; however, it is likely that the Bureau made mistakes in this classification in at least several cases. The mistakes were likely made in both directions: Some debt collectors that were SBA small at the time of the settlement were classified as large, and other debt collectors that were not SBA small at the time of the settlement were classified as small.

In addition to providing the Bureau the authority to regulate the use of arbitration agreements in consumer financial contracts, the Dodd-Frank Act prohibited all arbitration agreements in consumer mortgages[664] and authorized the Securities and Exchange Commission to regulate arbitration agreements in contracts between consumers and securities broker-dealers or investment advisers.[665] The Department of Health and Human Services also recently proposed regulations that would regulate the use of arbitration agreements in long-term care contracts with consumers.[666] Finally, the Department of Education released a proposal that, among other things, "would protect students from the use of mandatory arbitration provisions in enrollment agreements" for postsecondary schools.[667]

5. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The Bureau describes several potential alternatives below. The Bureau believes that none of these are significant alternatives insofar as they would not accomplish the goal of the proposed rulemaking with substantially less regulatory burden. Unless otherwise noted, the Bureau discusses these alternatives both for SBA small providers and for larger providers as well. The Bureau requests comment on these and other potential alternatives and on their further quantification.

Potential Alternatives Involving Disclosure, Consumer Education, Opt-In, or Opt-Out Requirements

In principle, effective disclosures coupled with consumer education could make consumers more cognizant in selecting a financial product or service, of the existence and consequences of an arbitration provision in the standard form contract and, *ex post,* could make consumers who have a dispute with the provider cognizant of the option of pursuing the dispute in arbitration. But the market failure this proposal seeks to address arises from the fact that consumers often lack awareness that they have a legal claim and, moreover, that even when they are aware of such claims, many are negative-value claims so that it is not practical for them to be pursued in any formal forum on an individual basis. Accordingly, individual enforcement mechanisms provide insufficient incentives to comply with the law. Thus, while a hypothetical perfect disclosure might give consumers an informed choice of whether to patronize a provider with an arbitration agreement, providers with arbitration agreements would still have a lower incentive to comply with the law under a disclosure intervention approach. The Bureau notes that in addition to not meeting the goals of this proposed rulemaking, all of the potential alternatives in this subsection would also impose costs on providers.[668]

Furthermore, there is reason to doubt that disclosures would be very effective in raising consumer awareness in any event. The Study indicates that the current consumer understanding of arbitration agreement is low,[669] and the Bureau believes that even with the most effective disclosures and education it is unlikely that many consumers would, at the outset of a customer relationship, anticipate that the provider will act unlawfully and assess the value of these dispute-resolution rights in a hypothetical future scenario.[670] Therefore, the Bureau believes that it would be difficult, if not impossible, for a disclosure to cause even a significant percentage of consumers to factor the presence of an arbitration agreement into their shopping behavior,[671] let alone to address the market failure discussed above.

Similar concerns arise with regard to opt-in and opt-out regimes. An opt-out regime would require providers to give consumers an option to opt out of the arbitration agreement when the consumer signs the contract or for some additional period. An opt-in regime would presume that a consumer is not bound by the arbitration agreement, unless a consumer affirmatively indicates otherwise. Many providers currently offer arbitration agreements that allow consumers to opt out at the point of contract formation or for a limited period afterward.[672] In contrast, the Bureau is unaware of a significant number of providers offering opt-in agreements.

Much as with disclosures, the Bureau believes that opt-in and opt-out arrangements would not meet the objectives of the proposed rule because neither would alleviate the market failure that the proposed rule is designed to address. Further, and again similar to disclosures, the fact that opt-out agreements are already used by a number of providers in markets for consumer financial services today but that very few consumers are aware whether they have arbitration agreements in their contracts suggest that such regimes are subject to many of the same awareness and effectiveness issues discussed above with regard to disclosures. Finally, economic theory suggests that even with regard to a more consumer-friendly "opt-in" system, an individual consumer would not have a sufficient incentive, from the market perspective, to refuse an opt-in offer.[673]

Consider an individual consumer's decision to opt-in. First, suppose that this consumer expects other consumers to opt-in. In this case, this individual consumer does not benefit from refusing an opt-in offer: The option of class litigation is not valuable if there are not enough consumers that could be in the potential class. Instead, suppose that this consumer expects other consumers to refuse the opt-in. In this case, the provider has a sufficient incentive to comply, and this individual consumer still does not benefit from refusing an opt-in offer.[674] In short, regardless of whether other consumers opt-in or refuse to opt-in, this individual consumer's choice does not matter for the provider's compliance incentives, so this individual consumer will not take even the minimal effort (or forgo even a minimal incentive) to refuse an opt-in offer: Consumers free-ride on other consumers.[675] Other consumers will think similarly, and thus an insufficient number of consumers will refuse an opt-in offer. Similar incentives are at play with an opt-out requirement. In general, a similar problem arises in provision of public goods and in other collective action settings.[676]

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[662] Financial Industry Regulatory Authority (FINRA) Rule 2268(f).

[663] 10 U.S.C. 987, as implemented by 32 CFR 232.8(c).

[664] Dodd-Frank section 1414(a). That prohibition was implemented in Regulation Z by the Bureau's Loan Originator Compensation Rule. 12 CFR 1026.36(h).

[665] Dodd-Frank section 921.

[666] Reform of Requirements for Long-Term Care Facilities, 80 FR 42168, 42264–65 (July 16, 2015) (proposing to require that arbitration agreements be explained in understandable language, acknowledged by the resident, provide for a convenient venue and a neutral arbiter, entered into on a voluntary basis, not be made a condition of admission, and not restrict or discourage communication with government authorities).

[667] Press Release, U.S. Department of Education, *U.S. Department of Education Takes Further Steps to Protect Students from Predatory Higher Education Institutions* (Mar. 11, 2016), *https://www.ed.gov/news/press-releases/us-department-education-takes-further-steps-protect-students-predatory-higher-education-institutions.*

[668] *See* Omri Ben-Shahar & Carl Schneider, *The Failure of Mandated Disclosure,* 159 U. Pa. L. Rev. 647 (2011) on disclosures.

[669] Despite contract language and placement that is not dramatically different from that of other contract provisions.

[670] *See* Study, *supra* note 2, section 3 at 16–23.

[671] Economic theory suggests that even that might not be sufficient. *See, e.g.,* R. Ted Cruz & Jeffrey Hinck, *Not My Brother's Keeper: The Inability of an Informed Minority to Correct for Imperfect Information,* 47 Hastings L.J. 635 (1995) and Mark Armstrong, *Search and Ripoff Externalities,* 47 Rev. Indus. Org. 273 (2015).

[672] *See* Study, *supra* note 2, section 2 at 31.

[673] An opt-in offer would involve a consumer entering an arbitration agreement only if the consumer were given the choice to enter the agreement (unconditional on the provision of the consumer financial product or service), followed by the consumer explicitly agreeing to the arbitration agreement. For example, this could be accomplished by having a checkbox in the contract by the arbitration agreement.

The Study shows that, currently, consumers are unlikely to even attempt such a calculation. Most, if not virtually all, consumers do not realize the significance of an arbitration agreement that can block class litigation, most consumers do not have an option to opt out of the agreement (though in some markets such as payday loans and private student loans opt-outs appear to be the norm), and in many markets the vast majority of providers use arbitration agreements.[677] However, the presence of the collective action problem discussed directly above shows that resolving these current issues, such as lack of consumer awareness, would still not get to the core of the public good/collective action market failure.

Total Ban of Pre-Dispute Arbitration Agreements

Under this potential alternative, arbitration would only occur if parties agree to it after a dispute arises. The primary difference between this option and the proposed rule is that individual disputes would not be subject to mandatory pre-dispute arbitration agreements. The Study could not determine empirically whether individual arbitration is more beneficial to consumers than individual litigation.[678] Compared with the proposed rule, this potential alternative would result in approximately the same cost to providers (either large or small), since providers rarely, if ever, face any individual arbitration currently. In addition, if providers were not allowed to maintain individual pre-dispute arbitration programs for consumers, then there is a risk that individual dispute resolution costs could increase; however, given the low number of such disputes, this cost increase would not be noticeable.

This potential alternative alleviates the market failure discussed in the Section 1022(b)(2) Analysis above and gives the providers same incentives to comply with the law as the proposed rule. However, this potential alternative could be more costly if individual arbitration proceedings are less expensive than individual litigation and parties do not voluntarily agree to post-dispute individual arbitration.

The Bureau believes that the current level of individual arbitrations, summed over all affected consumer financial products or services providers, is hundreds of arbitrations per year.[679] The Study does not identify a quantifiable comparison of the relative benefits and costs of individual arbitration relative to individual litigation. However, given the number of such arbitrations relative to the magnitude of quantifiable impacts of class litigation in the Section 1022(b)(2) Analysis (ignoring those impacts that are not quantifiable), the per-case differences between individual arbitration and litigation would have to be implausibly large to result in even a noticeable difference between benefits and costs, either to consumers or to providers, of this potential alternative relative to the proposed rule. The Bureau does not possess any evidence that shows that the per-case differences are indeed that large. Thus, the Bureau does not believe a total ban to be preferable with regard to regulatory burden.

Various Specific Exceptions to the Proposed Rule

During the SBREFA process, some of the SERs stated that some of the statutes (for example, TCPA) are particularly problematic and onerous if arbitration agreements cannot be used to block class litigation. The Bureau understands the SERs' argument that cases putatively seeking very large amounts of damages have a potential to amplify SERs' costs.

The Bureau's analysis of this argument is discussed in greater detail above in Part VI. From an economic theory perspective, the potential for these cases to be filed seeking very large damages also amplifies the incentive to comply with the law (for example, TCPA), and thus amplifies the benefits to consumers, even if providers pass on some of the costs to consumers in terms of higher prices. Thus, unless there is considerable evidence that compliance with or the remedial scheme established by a particular statute is against the public good the Bureau believes this issue, for the reasons discussed in Part VI, may be more appropriately addressed by Congress, state legislatures, and the courts.[680]

Small Entity Exemption

As outlined above in the Section-by-Section analysis to proposed § 1040.4(a), the Bureau requests comment on a small entity exemption, including which thresholds could be used for such an exemption for each market covered. The Bureau's estimates, based on current litigation levels, suggest that small providers would not be particularly affected by this proposed rule. However, a handful of small providers would likely face a Federal class action settlement due to this rule (and slightly higher numbers for providers who are debt collectors), and all small providers that have arbitration agreements would incur a cost of changing these agreements.[681] Thus, a small entity exemption would barely change the aggregate monetized costs and benefits, both to consumers and to providers.

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[674] Assuming the consumer is indifferent between individual arbitration and individual litigation.

[675] It is likely that there is some inertia in consumer's choice of whether to opt-in: If not prompted by the provider, the consumer is unlikely to opt-in by him or herself. However, even suggestions by providers' employees, let alone monetary incentives, while signing the contract could reverse this inertia.

[676] *See, e.g.*, Paul Samuelson, *The Pure Theory of Public Expenditure,* 36 Rev. of Econ. & Stat. 387 (1954); Mancur Olson, *The Logic of Collective Action* (Harv. Univ. Press 1965); Elinor Ostrom, *How Types of Goods and Property Rights Jointly Affect Collective Action,* 15 J. of Theo. Pol. 239 (2003). *See also* Eric Rasmusen, J. Mark Ramseyer & John Wiley, Jr., *Naked Exclusion,* 81 Am. Econ. Rev. 1137; Ilya Segal & Michael Whinston, *Naked Exclusion: Comment,* 90 Am. Econ. Rev. 296 (2000) (treatment of a similar problem in industrial organization); Keith Hylton, *The Economics of Class Actions and Class Action Waivers* (Forthcoming, Sup. Ct. Econ. Rev., 2015), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2277562*; David Rosenberg & Kathryn Spier, *Incentives to Invest in Litigation and the Superiority of the Class Action,* 6 J. of Legal Analysis 305 (2014); Eric Posner, Kathryn Spier & Adrian Vermeule, *Divide and Conquer,* 2 J. of Legal Analysis 417 (2010). The case of this rulemaking is somewhat more complicated than the standard underprovision of public goods, since there are strategic providers that react to the public good underprovision.

[677] *See generally* Study, *supra* note 2, sections 2 and 3. Consumers failing to realize the importance of arbitration agreements might be due to several reasons. This could either be due to behavioral or cognitive biases, rational inattention due to the issue not being sufficiently important to invest in learning, or it could be rational consumers with correct expectations not investing into learning the issue due to the collective action problem.

[678] *See* Part VI.A.

[679] *See* Study, *supra* note 2, section 5 at 20.

[680] The Bureau has also heard from stakeholders that other statutes with statutory damages should be exempted from the proposal. For example, some argue that allowing consumers to bring class actions pursuant to the Credit Repair Organizations Act (CROA) against providers that offer credit monitoring products could threaten the availability of those products due to the challenge of complying with CROA (to the extent it applies to those products).

The Bureau is concerned, however, that an exemption would eliminate the additional incentives to comply with the law provided by the exposure to class litigation. This is a particular concern for markets such as payday loans, where the vast majority of the market currently uses arbitration agreements, and thus it is harder to estimate the impact of the proposed rule and this potential alternative. Moreover, the Bureau is concerned that smaller providers without arbitration agreements might not be representative of small providers with arbitration agreements: In other words, that the providers that currently might not be complying with the law to the full extent might self-select into inserting arbitration agreements in their contracts.

At the same time, the Bureau acknowledges that, as discussed above, based on the evidence from providers that do not currently have arbitration agreements, the low monetized impact of class litigation estimated for small providers might suggest that the proposed rule would create weaker incentives to comply than for larger providers, since a given small provider is highly unlikely to face a class action. Moreover, as noted by the SERs during the SBREFA process, many small providers believe that they are already complying with the law to the fullest extent, notwithstanding the presence of arbitration agreements in their contracts. As discussed above, the Bureau is seeking comment on all issues relating to a small entity exemption.

Public Options

Various stakeholders suggested alternatives related to public enforcement. Aside from an alternative that the Bureau does not have the power to accomplish—sizably increasing enforcement at all regulators of the providers affected by the proposed rule—most of these suggestions would mostly duplicate what the providers can do already. For example, providers that discover a compliance issue before a class action is filed can already (and sometimes do) submit a description of the compliance issue to their regulator and attempt to work out a solution (that may or may not involve fines and payments to consumers). If consumers are compensated during the process, then there is less potential recovery for any following private litigation. Moreover, as the Study demonstrates, such private litigation following the same matter decided by public enforcement is rare.[682] Given that the suggested mechanisms could be used by providers today if they felt sufficient incentive to reduce compliance and litigation risk, the Bureau does not believe that these options could be relied upon to achieve the policy goals of the proposed rule.

Request for Comment

The Bureau requests comment on these and any other alternative policy options that may accomplish the goals of the proposed rulemaking with substantially less regulatory burden, including a detailed description of the option and any evidence that would indicate that the option could achieve such goals.

6. Discussion of Impact on Cost of Credit for Small Entities

Although SERs expressed concern that the proposed rule could affect costs that they bear when they seek out business credit to facilitate their operations, the Bureau believes based on its estimates derived from current litigation levels as discussed above that the vast majority of small providers' cost of credit would not be impacted by the proposed rule. However, given a higher likelihood that a smaller debt collector would be subject to incremental class litigation at any given time, it is possible that a fraction of small debt collectors might experience an adverse impact on their cost of credit if they were subject to ongoing class litigation at a time when they were seeking credit. However, the Study indicated that the majority of cases filed as class actions are resolved within a few months, such that any such adverse impact is likely to be only temporary.

7. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Increase in the Cost of Credit for Small Entities

As stated above, the Bureau does not believe that the vast majority of the small providers' cost of credit will be impacted. The Bureau also is not aware of any significant alternatives that would minimize the impact on small debt collectors' cost of credit while accomplishing the objectives of the proposed rule. The Bureau notes that any alternatives would be particularly complicated with regard to application to smaller debt collectors, as they typically use the contract of another firm, for example a credit card issuer.

8. Description of the Advice and Recommendations of Representatives of Small Entities relating to Issues Described in 6 and 7 Above

As noted in the SBREFA Panel Report, the small entity representatives (SERs) expressed concerns about how the proposals under consideration would affect their borrowing costs. One SER believed his business would lose its line of credit if it could not use arbitration agreements to block class actions. Another SER stated that the class proposal under consideration would increase her business's borrowing costs, and also that drawing on its credit to pay litigation costs related to a class action would "raise warning signs" for her business's lender. Another SER stated that mere exposure to class action liability would cause his business's lender to "raise an eyebrow." One debt collector SER stated that his company's bank had closed its line of credit in recent years due to concerns over the industry but that the company was able to obtain a line of credit at another bank relatively quickly. None of these SERs reported that they actually had spoken with their lender or that, when they sought credit in the past, their lender inquired as to whether they used arbitration agreements in their consumer contracts.

In general, SERs in the business of extending credit stated that the proposal under consideration regarding class actions might cause them to increase the cost of credit they offer to their consumers. One of these SERs stated that the proposal may increase his business's expenses overall—such as insurance premiums, compliance investment, and exposure to class actions for which his business is uninsured—and, due to that SER's thin margins, such increases may require his business to increase the cost of consumer credit. However, another SER—a short-term, small-dollar lender—stated that he would be unable to increase the cost of his business's consumer loans due to limitations imposed by state law. Another SER, a buy-here-pay-here auto dealer, stated that, in addition to potentially raising the cost of credit, his business could recoup costs by increasing its debt collection and collateral recovery efforts.

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[681] The Bureau notes again that the vast majority of the estimated additional Federal class action settlements in this Section 1022(b)(2) Analysis would be class action settlements with debt collectors. A small entity exemption would be unlikely to change that, as even small debt collectors would likely be collecting on debt of larger credit card issuers whose arbitration agreements, if existent, could not be used to invoke in class litigation. *See* proposed § 1040.4(a)(1).

[682] *See* Study, *supra* note 2, section 9 at 13–16.

Three SERs predicted that, if the class proposal under consideration goes into effect, some small entities would reduce their product offerings. One of these SERs speculated that products designed for underserved groups may be especially vulnerable because cases involving such products are more attractive to plaintiff's attorneys.

X. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are generally required to seek the Office of Management and Budget's (OMB) approval for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or sponsor—and, notwithstanding any other provision of law, a person is not required to respond to—an information collection unless the information collection displays a valid control number assigned by OMB.[683]

As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on new information collection requirements in accordance with the PRA.[684] This helps ensure that the public understands the Bureau's requirements or instructions; respondents can provide the requested data in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the Department can properly assess the impact of collection requirements on respondents.

The Bureau believes that this proposed rule would impose the following two new information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA. Both information collections would apply to agreements entered into after the compliance date of the rule.[685]

The first information collection requirement relates to proposed disclosure requirements. The proposal would require providers that enter into arbitration agreements with consumers to ensure that these arbitration agreements contain a specified provision, with two limited exceptions as described below.[686] The specified provision would effectively state that no person can use the agreement to stop the consumer from being part of a class action case in court.[687] The Bureau proposed this language and, if the rule is adopted as proposed, providers would be required to use it unless an enumerated exception applies. The Bureau is also proposing to permit providers to use an alternative provision in connection with arbitration agreements in contracts for multiple products or services, some of which are not covered by the proposed rule.[688]

The proposed rule contains two exceptions to this first information collection requirement. Under the first exception, if a provider enters into an arbitration agreement that existed previously (and was entered into by another person after the compliance date),[689] and the agreement does not already contain the provision required by proposed § 1040.4(a)(2)(i) (or the alternative provision permitted by proposed § 1040.4(a)(2)(ii)), the provider must either ensure that the agreement is amended to contain a specified provision or send any consumer to whom the agreement applies a written notice containing specified language. The provider is required to ensure the agreement is amended or provide the written notice within 60 days of entering into the agreement.[690] Under the second exception, the requirement to ensure that an arbitration agreement entered into after the compliance date contains the provision required by proposed § 1040.4(a)(2)(i) (or the alternative provision permitted by proposed § 1040.4(a)(2)(ii)) would not apply to an arbitration agreement for a general-purpose reloadable prepaid card if certain conditions are satisfied with respect to when the card was packaged and purchased in relation to the compliance date. For a prepaid card provider that has the ability to contact the consumer in writing, the provider must also, within 30 days of obtaining the consumer's contact information, notify the consumer in writing that the arbitration agreement complies with the requirements of proposed § 1040.4(a)(2) by providing an amended arbitration agreement to the consumer.[691]

The second information collection requirement relates to proposed reporting requirements. The proposal would require providers to submit specified arbitral records to the Bureau relating to any arbitration agreement entered into after the compliance date.[692] The proposal would require the submission of two general categories of documents to the Bureau. The first category would require providers to submit certain records in connection with any claim filed in arbitration by or against the provider concerning a covered consumer financial product or service. In particular, providers would be required to submit the following four types of documents in connection with any claim filed in arbitration: (1) The initial claim and any counterclaim; (2) the arbitration agreement filed with the arbitrator or arbitration administrator; (3) the judgment or award, if any, issued by the arbitrator or arbitration administrator; and (4) if an arbitrator or arbitration administrator refuses to administer or dismisses a claim due to the provider's failure to pay required filing or administrative fees, any communication the provider receives from the arbitrator or an arbitration administrator related to such a refusal.[693] The second category would require providers to submit any communications the provider receives from an arbitrator or arbitration administrator related to a determination that an arbitration agreement covered by the proposed rule does not comply with the administrator's fairness principles, rules, or similar requirements.[694]

The proposal would require providers to submit any record described above to the Bureau within 60 days of filing by the provider or, in the case of records filed by other persons (such as arbitrators, arbitration administrators, or consumers), receipt by the provider.[695] The proposal would further require that, before submitting these records to the Bureau, a provider must redact any of nine specific types of information to the extent such information appears in any of these documents.[696]

The estimated burden on Bureau respondents from the proposed adoption of part 1040 are summarized below. A complete description of the information collection requirements, including the burden estimate methods, is provided in the information collection request (ICR) that the Bureau has submitted to OMB under the requirements of the PRA.

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[683] 44 U.S.C. 3507(a).

[684] 44 U.S.C. 3506(c)(2)(A).

[685] *See* proposed § 1040.5(a).

[686] *See* proposed § 1040.4(a)(2). In addition to the one-time change described directly above, some providers could be affected on an ongoing basis or sporadic basis in the future as they acquire existing contracts as the result of regular or occasional activity, under proposed § 1040.4(a)(2). As noted above in the Section 1022(b)(2) Analysis, the Bureau believes that this requirement does not impose a material burden, and thus the Bureau does not further discuss it in this Section 1022(b)(2) Analysis.

[687] *See* proposed § 1040.4(a)(2)(i).

[688] *See* proposed § 1040.4(a)(2)(ii).

[689] *See* proposed comment 4(a)(2)–2 for an example of when this could occur.

[690] *See* proposed § 1040.4(a)(2)(iii).

[691] *See* proposed § 1040.5(b).

[692] *See* proposed § 1040.4(b).

[693] *See* proposed § 1040.4(b)(1)(i).

[694] *See* proposed § 1040.4(b)(1)(ii).

[695] *See* proposed § 1040.4(b)(2).

[696] *See* proposed § 1040.4(b)(3).

Table 4: One-time Burden

		Number of Respondents	Average Burden per Respondent	Total One-time Burden (hours)	Hourly Rate	Total Costs (One-time Burden)
1040.4(a)(2)	Provision required in covered pre-dispute arbitration agreements	48,000	2	96,000	$200	$19,200,000
1040.4(b)	Submission of arbitral records	0	0	0	$0	$0
Total		**48,000**	**2**	**96,000**		**$19,200,000**

Table 5: Ongoing Burden

		Number of Respondents	Average Annual Burden per Respondent	Total One-time Burden (hours)	Hourly Rate	Total Costs (One-time Burden)
1040.4(a)(2)	Provision required in covered pre-dispute arbitration agreements	0	0	0	$0	0
1040.4(b)	Submission of arbitral records	Up to 500	1	0	$500	$250,000
Total		**0**	**1**	**0**		**$250,000**

Please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Bureau of Consumer Financial Protection. Send these comments by email to *oira_submission@omb.eop.gov* or by fax to (202) 395–6974. If you wish to share your comments with the Bureau, please send a copy of these comments to the docket for this proposed rule at *www.regulations.gov*. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at *www.regulations.gov* as well as OMB's public-facing docket at *www.reginfo.gov*.

Title of Collection: Arbitration Agreements, Disclosure and Reporting Requirements.

OMB Control Number: 3170–XXXX.

Type of Review: New collection (Request for a new OMB control number).

Affected Public: Private Sector.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (2) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

If applicable, in any notice of final rule the Bureau would display the control number assigned by OMB to any information collection requirements proposed herein and adopted in any final rule. If the OMB control number has not been assigned prior to publication of any final rule in the **Federal Register**, the Bureau would publish a separate notice in the **Federal Register** prior to the effective date of any final rule.

List of Subjects in 12 Part 1040

Banks, banking, Business and industry, Claims, Consumer protection, Contracts, Credit, Credit unions, Finance, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to add part 1040 to chapter X in title 12 of the Code of Federal Regulations, as set forth below:

PART 1040—ARBITRATION AGREEMENTS

Sec.
1040.1 Authority, purpose, and enforcement.
1040.2 Definitions.
1040.3 Coverage.
1040.4 Limitations on the use of pre-dispute arbitration agreements.
1040.5 Compliance date and temporary exception.
Supplement I to Part 1040—Official Interpretations.

Authority: 12 U.S.C. 5512(b) and (c) and 5518(b).

§ 1040.1 Authority, purpose, and enforcement.

(a) *Authority.* The regulation in this part is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to sections 1022(b)(1) and (c) and 1028(b) of the Dodd-Frank Act (12 U.S.C. 5512(b) and (c) and 5518(b)).

(b) *Purpose.* The purpose of this part is the furtherance of the public interest and the protection of consumers regarding the use of agreements for consumer financial products and services providing for arbitration of any future dispute.

§ 1040.2 Definitions.

(a) *Class action* means a lawsuit in which one or more parties seek class treatment pursuant to Federal Rule of Civil Procedure 23 or any State process analogous to Federal Rule of Civil Procedure 23.

(b) *Consumer* means an individual or an agent, trustee, or representative acting on behalf of an individual.

(c) *Provider* means:

(1) A person as defined by 12 U.S.C. 5481(19) that engages in offering or providing any of the consumer financial products or services covered by § 1040.3(a) to the extent that the person is not excluded under § 1040.3(b); or

(2) An affiliate of a provider as defined in paragraph (c)(1) of this section when that affiliate is acting as a service provider to the provider as defined in paragraph (c)(1) of this section with which the service provider is affiliated consistent with 12 U.S.C. 5481(6)(B).

(d) *Pre-dispute arbitration agreement* means an agreement between a provider and a consumer providing for arbitration of any future dispute between the parties.

§ 1040.3 Coverage.

(a) *Covered consumer financial products and services.* This part generally applies to pre-dispute arbitration agreements for the following products or services when they are consumer financial products or services as defined by 12 U.S.C. 5481(5):

(1)(i) Providing an "extension of credit" that is "consumer credit" as defined in Regulation B, 12 CFR 1002.2;

(ii) Acting as a "creditor" as defined by 12 CFR 1002.2(l) by regularly participating in a credit decision consistent with its meaning in 12 CFR 1002.2(l) concerning "consumer credit" as defined by 12 CFR 1002.2(h);

(iii) Acting, as a person's primary business activity, as a "creditor" as defined by 12 CFR 1002.2(l) by referring applicants or prospective applicants to creditors, or selecting or offering to select creditors to whom requests for credit may be made consistent with its meaning in 12 CFR 1002.2(l);

(iv) Acquiring, purchasing, or selling an extension of consumer credit covered by paragraph (a)(1)(i) of this section; or

(v) Servicing an extension of consumer credit covered by paragraph (a)(1)(i) of this section; or

(2) Extending automobile leases as defined by 12 CFR 1090.108 or brokering such leases;

(3) Providing services to assist with debt management or debt settlement, modify the terms of any extension of consumer credit covered by paragraph (a)(1)(i) of this section, or avoid foreclosure;

(4) Providing directly to a consumer a consumer report as defined by the Fair Credit Reporting Act, 15 U.S.C. 1681a(d), a credit score, or other information specific to a consumer from such a consumer report, except when such consumer report is provided by a user covered by 15 U.S.C. 1681m solely in connection with an adverse action as defined in 15 U.S.C. 1681a(k) with respect to a product or service not covered by any of paragraphs (a)(1) through (3) or (a)(5) through (10) of this section;

(5) Providing accounts subject to the Truth in Savings Act, 12 U.S.C. 4301 *et seq.*, as implemented by 12 CFR part 707, and Regulation DD, 12 CFR part 1030;

(6) Providing accounts or remittance transfers subject to the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, as implemented by Regulation E, 12 CFR part 1005;

(7) Transmitting or exchanging funds as defined by 15 U.S.C. 5481(29) except when integral to another product or service that is not covered by this section;

(8) Accepting financial or banking data or providing a product or service to accept such data directly from a consumer for the purpose of initiating a payment by a consumer via any payment instrument as defined by 15 U.S.C. 5481(18) or initiating a credit card or charge card transaction for the consumer, except when the person accepting the data or providing the product or service to accept the data also is selling or marketing the nonfinancial good or service for which the payment or credit card or charge card transaction is being made;

(9) Check cashing, check collection, or check guaranty services; or

(10) Collecting debt arising from any of the consumer financial products or services described in paragraphs (a)(1) through (9) of this section by:

(i) A person offering or providing the product or service giving rise to the debt being collected, an affiliate of such person, or, a person acting on behalf of such person or affiliate;

(ii) A person purchasing or acquiring an extension of consumer credit covered by paragraph (a)(1)(i) of this section, an affiliate of such person, or, a person acting on behalf of such person or affiliate; or

(iii) A debt collector as defined by 15 U.S.C. 1692a(6).

(b) *Excluded persons.* This part does not apply to the following persons to the extent they are offering or providing any of the following products and services:

(1) Broker dealers to the extent that they are providing products or services described in paragraph (a) of this section that are subject to rules promulgated or authorized by the U.S. Securities and Exchange Commission prohibiting the use of pre-dispute arbitration agreements in class action litigation and providing for making arbitral awards public;

(2)(i) The federal government and any affiliate of the Federal government providing any product or service described in paragraph (a) of this section directly to a consumer; or

(ii) A State, local, or tribal government, and any affiliate of a State, local, or tribal government, to the extent it is providing any product or service described in paragraph (a) of this section directly to a consumer who resides in the government's territorial jurisdiction;

(3) Any person when providing a product or service described in paragraph (a) of this section that the person and any of its affiliates collectively provide to no more than 25 consumers in the current calendar year and to no more than 25 consumers in the preceding calendar year;

(4) Merchants, retailers, or other sellers of nonfinancial goods or services to the extent they:

(i) Provide an extension of consumer credit covered by paragraph (a)(1)(i) of this section that is of the type described in 12 U.S.C. 5517(a)(2)(A)(i) and they would be subject to the Bureau's authority only under 12 U.S.C. 5517(a)(2)(B)(i) but not 12 U.S.C. 5517(a)(2)(B)(ii) or (iii); or

(ii) Purchase or acquire an extension of consumer credit excluded by paragraph (b)(4)(i) of this section; or

(5) Any person to the extent the limitations in 12 U.S.C. 5517 or 5519 apply to the person or a product or service described in paragraph (a) of this section that is offered or provided by the person.

§ 1040.4 Limitations on the use of pre-dispute arbitration agreements.

(a) *Use of pre-dispute arbitration agreements in class actions*—(1) *General rule.* A provider shall not seek to rely in any way on a pre-dispute arbitration agreement entered into after the date set forth in § 1040.5(a) with respect to any aspect of a class action that is related to any of the consumer financial products or services covered by § 1040.3 including to seek a stay or dismissal of particular claims or the entire action, unless and until the presiding court has ruled that the case may not proceed as a class action and, if that ruling may be subject to appellate review on an interlocutory basis, the time to seek such review has elapsed or the review has been resolved.

(2) *Provision required in covered pre-dispute arbitration agreements.* Upon entering into a pre-dispute arbitration agreement for a product or service covered by § 1040.3 after the date set forth in § 1040.5(a):

(i) Except as provided in paragraph (a)(2)(ii) or (iii) of this section or in § 1040.5(a), a provider shall ensure that the agreement contains the following provision:

> We agree that neither we nor anyone else will use this agreement to stop you from being part of a class action case in court. You may file a class action in court or you may be a member of a class action even if you do not file it.

(ii) When the pre-dispute arbitration agreement is for multiple products or services, only some of which are covered by § 1040.3, the provider may include the following alternative provision in place of the one otherwise required by paragraph 4(a)(2)(i) of this section:

> We are providing you with more than one product or service, only some of which are covered by the Arbitration Agreements Rule issued by the Consumer Financial Protection Bureau. We agree that neither we nor anyone else will use this agreement to stop you from being part of a class action case in court. You may file a class action in court or you may be a member of a class action even if you do not file it. This provision applies only to class action claims concerning the products or services covered by that Rule.

(iii) When the pre-dispute arbitration agreement existed previously between other parties and does not contain either the provision required by paragraph (a)(2)(i) of this section or the alternative permitted by paragraph (a)(2)(ii) of this section, the provider shall either ensure the agreement is amended to contain the provision specified in paragraph (a)(2)(iii)(A) of this section or provide any consumer to whom the agreement applies with the written notice specified in paragraph (a)(2)(iii)(B) of this section. The provider shall ensure the agreement is amended or provide the notice to consumers within 60 days of entering into the pre-dispute arbitration agreement.

(A) *Agreement provision.* A pre-dispute arbitration agreement amended pursuant to paragraph (a)(2)(iii) of this section shall contain the following provision:

> We agree that neither we nor anyone else who later becomes a party to this pre-dispute arbitration agreement will use it to stop you from being part of a class action case in court. You may file a class action in court or you may be a member of a class action even if you do not file it.

(B) *Notice.* A notice provided pursuant to paragraph (a)(2)(iii) of this section shall state the following:

> We agree not to use any pre-dispute arbitration agreement to stop you from being part of a class action case in court. You may file a class action in court or you may be a member of a class action even if you do not file it.

(b) *Submission of arbitral records.* For any pre-dispute arbitration agreement entered into after the date set forth in § 1040.5(a), a provider shall comply with the requirements set forth in paragraphs (b)(1) through (3) of this section.

(1) *Records to be submitted.* A provider shall submit a copy of the following records to the Bureau, in the form and manner specified by the Bureau:

(i) In connection with any claim filed in arbitration by or against the provider concerning any of the consumer financial products or services covered by § 1040.3;

(A) The initial claim and any counterclaim;

(B) The pre-dispute arbitration agreement filed with the arbitrator or arbitration administrator;

(C) The judgment or award, if any, issued by the arbitrator or arbitration administrator; and

(D) If an arbitrator or arbitration administrator refuses to administer or dismisses a claim due to the provider's failure to pay required filing or administrative fees, any communication the provider receives from the arbitrator or an arbitration administrator related to such a refusal; and

(ii) Any communication the provider receives from an arbitrator or an arbitration administrator related to a determination that a pre-dispute arbitration agreement for a consumer financial product or service covered by § 1040.3 does not comply with the administrator's fairness principles, rules, or similar requirements, if such a determination occurs.

(2) *Deadline for submission.* A provider shall submit any record required pursuant to paragraph (b)(1) of this section within 60 days of filing by the provider of any such record with the arbitrator or arbitration administrator and within 60 days of receipt by the provider of any such record filed or sent by someone other than the provider, such as the arbitration administrator or the consumer.

(3) *Redaction.* Prior to submission of any records pursuant to paragraph (b)(1) of this section, a provider shall redact the following information:

(i) Names of individuals, except for the name of the provider or the arbitrator where either is an individual;

(ii) Addresses of individuals, excluding city, State, and zip code;

(iii) Email addresses of individuals;

(iv) Telephone numbers of individuals;

(v) Photographs of individuals;

(vi) Account numbers;

(vii) Social Security and tax identification numbers;

(viii) Driver's license and other government identification numbers; and

(ix) Passport numbers.

§ 1040.5 Compliance date and temporary exception.

(a) *Compliance date.* Compliance with this part is required for any pre-dispute arbitration agreement entered into after [DATE 211 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

(b) *Exception for pre-packaged general-purpose reloadable prepaid card agreements.* Section 1040.4(a)(2) shall not apply to a provider that enters into a pre-dispute arbitration agreement for a general-purpose reloadable prepaid card if the requirements set forth in either paragraph (b)(1) or (2) of this section are satisfied.

(1) For a provider that does not have the ability to contact the consumer in writing:

(i) The consumer acquires a general-purpose reloadable prepaid card in person at a retail store;

(ii) The pre-dispute arbitration agreement was inside of packaging material when the general-purpose reloadable prepaid card was acquired; and

(iii) The pre-dispute arbitration agreement was packaged prior to [DATE 211 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

(2) For a provider that has the ability to contact the consumer in writing:

(i) The provider meets the requirements set forth in paragraphs (b)(1)(i) through (iii) of this section; and

(ii) Within 30 days of obtaining the consumer's contact information, the provider notifies the consumer in writing that the pre-dispute arbitration agreement complies with the requirements of § 1040.4(a)(2) by providing an amended pre-dispute arbitration agreement to the consumer.

Supplement I to Part 1040—Official Interpretations

Section 1040.2—Definitions

2(c) Provider

1. *Providers of multiple products or services.* A provider as defined in § 1040.2(c) that also engages in offering or providing products or services not covered by § 1040.3 must comply with this part only for the products or services that it offers or provides that are covered by § 1040.3. For example, a merchant that transmits funds for its customers would be covered pursuant to § 1040.3(a)(6) with respect to the transmittal of funds. That same merchant generally would not be covered with respect to the sale of durable goods to consumers, except as provided in 12 U.S.C. 5517(a)(2)(B)(ii) or (iii).

2(d) Pre-Dispute Arbitration Agreement

1. *Form of pre-dispute arbitration agreements.* A pre-dispute arbitration agreement for a consumer financial product or service includes any agreement between a provider and a consumer providing for arbitration of any future disputes between the parties, regardless of its form or structure. Examples include a standalone pre-dispute arbitration agreement that applies to a product or service, as well as a pre-dispute arbitration agreement that is included within, annexed to, incorporated into, or otherwise made a part of a larger agreement that governs the terms of the provision of a product or service.

Section 1040.3—Coverage

3(a) Covered Products or Services

1. *Consumer financial products or services pursuant to 12 U.S.C. 5481(5).* Section 1040.3(a) provides that the products or services listed in therein are covered by part 1040 when they are consumer financial products or services as defined by 12 U.S.C. 5481(5). Products or services generally meet this definition in either of two ways: they are offered or provided for use by consumers primarily for personal, family, or household purposes, or they are delivered, offered, or provided in connection with such products or services. Examples of the second type of consumer product or service include debt collection, when the underlying loan that is the subject of collection is a consumer financial product or service.

Paragraph (a)(1)(i)

1. *Coverage of extensions of consumer credit by creditors.* A transaction is only an extension of consumer credit, as defined by Regulation B, if the credit is extended by a "creditor." Persons who do not regularly participate in credit decisions in the ordinary course of business, for example, are not creditors as defined by Regulation B. 12 CFR 1002.2(l).

Paragraph (a)(1)(iii)

1. *Offering or providing referral or creditor selection services.* Section 1040.3(a)(1)(iii) includes in the coverage of part 1040 providing referrals or providing or offering creditor selection consistent with the meaning in 12 CFR 1002.2(l) by a creditor as its primary business. A person whose primary business is the sale of non-financial goods or services that also provides or offers the services described in § 1040.3(a)(1)(iii) would not be covered under § 1040.4(a)(1)(iii) because the referrals are not its primary business.

Paragraph (a)(1)(v)

1. *Servicing of credit.* Section 1040.3(a)(1)(v) includes in the coverage of part 1040 servicing of extensions of consumer credit. Servicing of extensions of consumer credit includes, but is not limited to, student loan servicing as defined in 12 CFR 1090.106 and mortgage loan servicing as defined in 12 CFR 1024.2(b).

Paragraph (a)(3)

1. *Debt relief products and services.* Section 1040.3(a)(3) includes in the coverage of Part 1040 services that offer to renegotiate, settle, or modify the terms of a consumer's debt. Providers of these services would be covered by § 1040.3(a)(3) regardless of the source of the debt, including but not limited to when seeking to relieve consumers of a debt that does not arise from a consumer credit transaction as described by § 1040.3(a)(1)(i) or from a consumer financial product or service more generally.

Paragraph (a)(8)

1. *Credit card and charge card transactions.* Section 1040.3(a)(8) includes in the coverage of part 1040 certain payment processing activities involving the initiation of credit card or charge card transactions. The terms "credit card "and "charge card" are defined in Regulation Z, 12 CFR 1026.2(a)(15). For purposes of § 1040.3(a)(8), those definitions in Regulation Z apply.

Paragraph (a)(10)

1. *Collection of debt by the same person arising from covered and non-covered products and services.* Section 1040.3(a)(10)(i) includes in the coverage of part 1040 the collection of debt by a provider that arises from its providing any of the products and services described in paragraphs (a)(1) through (9) of § 1040.3, including for example an extension of consumer credit described in § 1040.3(a)(1). If the person collecting such debt also collects other debt that does not arise from any of the products and services described in paragraphs (a)(1) through (9) of § 1040.3, the collection of that other debt is not included in the coverage of § 1040.3(a)(10)(i). For example, if a creditor extended consumer credit to consumers and business credit to other persons, § 1040.3(a)(10)(i) would include in the coverage of part 1040 the collection of the consumer credit but not the collection of the business credit. Similarly, if a debt buyer purchases a portfolio of credit card debt that includes both consumer and business debt, § 1040.3(a)(10)(ii) would include in the coverage of Part 1040 only the collection of the consumer credit card debt.

2. *Collection of debt by affiliates.* Paragraphs (a)(10)(i) and (ii) of § 1040.3 cover certain collection activities not only by providers themselves, but also by their affiliates. The term "affiliate" is defined in 12 U.S.C. 5481(1) as any person that controls, or is controlled by, or is under common control with another person.

3(b) Excluded Persons

Paragraph (b)(1)

1. *Exclusion for broker dealers to the extent they are subject to certain rules promulgated by the Financial Industry Regulatory Authority.* Section 1040.3(b)(1) excludes from the coverage of part 1040 broker dealers to the extent they are subject to rules promulgated or authorized by the U.S. Securities and Exchange Commission (SEC) prohibiting the use of pre-dispute arbitration agreements in class action litigation and providing that arbitral awards be made public. Rules authorized by the SEC as referenced in § 1040.3(b)(1) include those promulgated by the Financial Industry Regulatory Authority (FINRA) and authorized by the SEC, such as FINRA Rule 2268: Requirements When Using Predispute Arbitration Agreements for Customer Accounts, FINRA Rule 12204: Class Action Claims, and FINRA Rule 12904: Awards.

Paragraph (b)(2)

1. *Exclusion only for governments and their affiliates.* Section 1040.3(b)(2) excludes from the coverage of part 1040 governments and their affiliates under certain circumstances. The term "affiliate" is defined in 12 U.S.C. 5481(1) as any person that controls, or is controlled by, or is under common control with another person. One of the requirements for this exclusion in § 1040.3(b)(2) to apply to a government or government affiliate is that the government or government affiliate itself be providing the covered product or service directly to consumers. As a result, the exclusion does not extend to an entity that may provide services on behalf of a government or government affiliate, when the entity is not itself a government or government affiliate.

2. *Examples of consumer financial products or services provided directly by a government or government affiliate to consumers who reside in the territorial jurisdiction of the government.* Section 1040.3(b)(2)(ii) excludes from the coverage of part 1040 State, local, or tribal governments and their affiliates when directly providing a consumer

financial product or service to consumers who reside in the government's territorial jurisdiction.

i. Such products or services provided to a consumer who resides in the territorial jurisdiction of the government may include, but are not limited to, the following:

A. A bank that is an affiliate of a State government providing a student loan or deposit account directly to a resident of the State; or

B. A utility that is an affiliate of a State or municipal government providing credit or payment processing services directly to a consumer who resides in the State or municipality to allow a consumer to purchase energy from an energy supplier that is not an affiliate of the same State or municipal government.

ii. Such products or services provided to a consumer who does not reside in the territorial jurisdiction of the government may include, but are not limited to, the following:

A. A bank that is an affiliate of a State government providing a student loan to a student who resides in another State; or

B. A tribal government affiliate providing a short-term loan to a consumer who does not reside in the tribal government's territorial jurisdiction and completes the transaction via the Internet.

Paragraph (b)(3)

1. *Including consumers to whom affiliates offer or provide a product or service toward the numerical threshold for exemption of a person under § 1040.4(b)(3).* Section 1040.3(b)(3) provides an exclusion to persons offering or providing a service covered by § 1040.3(a) if no more than 25 consumers are offered the product or service in the current and prior calendar years by the person and its affiliates. For purposes of this test, the number of consumers to whom affiliates of a person offer or provide a product or service is combined with the number of consumers to whom the person itself offers or provides that product or service. The term "affiliate" is defined in 12 U.S.C. 5481(1) as any person that controls, or is controlled by, or is under common control with another person.

Section 1040.4 Limitations on the Use of Pre-Dispute Arbitration Agreements

1. *Enters into a pre-dispute arbitration agreement.* Section 1040.4 applies to providers that enter into pre-dispute arbitration agreements after the date set forth in § 1040.5(a).

i. Examples of when a provider enters into a pre-dispute arbitration agreement for purposes of § 1040.4 include but are not limited to when the provider:

A. Provides to a consumer a new product or service that is subject to a pre-dispute arbitration agreement, and the provider is a party to the pre-dispute arbitration agreement;

B. Acquires or purchases a product covered by § 1040.3(a) that is subject to a pre-dispute arbitration agreement and becomes a party to that pre-dispute arbitration agreement, even if the person selling the product is excluded from coverage under § 1040.3(b); or

C. Adds a pre-dispute arbitration agreement to an existing product or service.

ii. Examples of when a provider does not enter into a pre-dispute arbitration agreement for purposes of § 1040.4 include but are not limited to when the provider:

A. Modifies, amends, or implements the terms of a product or service that is subject to a pre-dispute arbitration agreement that was entered into before the date set forth in § 1040.5(a); or

B. Acquires or purchases a product that is subject to a pre-dispute arbitration agreement but does not become a party to the pre-dispute arbitration agreement.

2. *Application of § 1040.4 to providers that do not enter into pre-dispute arbitration agreements.*

i. Pursuant to § 1040.4(a)(1), a provider cannot rely on any pre-dispute arbitration agreement entered into by another person after the effective date with respect to any aspect of a class action concerning a product or service covered by § 1040.3 and pursuant to § 1040.4(b) may be required to submit certain specified records related to claims filed in arbitration pursuant to such pre-dispute arbitration agreements. *See* comment 4(a)(2)–1, however, which clarifies that § 1040.4(a)(2) does not apply to providers that do not enter into pre-dispute arbitration agreements.

ii. For example, when a debt collector collecting on consumer credit covered by § 1040.3(a)(1)(i) has not entered into a pre-dispute arbitration agreement, § 1040.4(a)(1) nevertheless prohibits the debt collector from relying on a pre-dispute arbitration agreement entered into by the creditor with respect to any aspect of a class action filed against the debt collector concerning its debt collection products or services covered by § 1040.3. Similarly, § 1040.4(a)(1) would also prohibit the debt collector from relying with respect to any aspect of such a class action on a pre-dispute arbitration agreement entered into by a merchant creditor who was excluded from coverage by § 1040.3(b)(5).

4(a) Use of Pre-Dispute Arbitration Agreements in Class Actions

4(a)(1) General Rule

1. *Reliance on a pre-dispute arbitration agreement.* Section 1040.4(a)(1) provides that a provider shall not seek to rely in any way on a pre-dispute arbitration agreement entered into after the compliance date set forth in § 1040.5(a) with respect to any aspect of a class action concerning any of the consumer financial products or services covered by § 1040.3. Reliance on a pre-dispute arbitration agreement with respect to any aspect of a class action includes, but is not limited to, any of the following:

i. Seeking dismissal, deferral, or stay of any aspect of a class action;

ii. Seeking to exclude a person or persons from a class in a class action;

iii. Objecting to or seeking a protective order intended to avoid responding to discovery in a class action;

iv. Filing a claim in arbitration against a consumer who has filed a claim on the same issue in a class action;

v. Filing a claim in arbitration against a consumer who has filed a claim on the same issue in a class action after the trial court has denied a motion to certify the class but before an appellate court has ruled on an interlocutory appeal of that motion, if the time to seek such an appeal has not elapsed or the appeal has not been resolved; and

vi. Filing a claim in arbitration against a consumer who has filed a claim on the same issue in a class action after the trial court in that class action has granted a motion to dismiss the claim and, in doing so, the court noted that the consumer has leave to refile the claim on a class basis, if the time to refile the claim has not elapsed.

2. *Class actions concerning multiple products or services.* In a class action concerning multiple products or services only some of which are covered by § 1040.3, the prohibition in § 1040.4(a)(1) applies only to claims that concern the consumer financial products or services covered by § 1040.3.

4(a)(2) Required Provision

1. *Application of § 1040.4(a)(2) to providers that do not enter into pre-dispute arbitration agreements.* Section 1040.4(a)(2) sets forth requirements only for providers that enter into pre-dispute arbitration agreements for a covered product or service. Accordingly, the requirements of § 1040.4(a)(2) do not apply to a provider that does not enter into a pre-dispute arbitration agreement with a consumer.

2. *Entering into a pre-dispute arbitration agreement that had existed previously between other parties.* Section 1040.4(a)(2)(iii) requires a provider that enters into a pre-dispute arbitration agreement that had existed previously as between other parties and does not contain the provision required by § 1040.4(a)(2)(i) or (ii), either to ensure the agreement is amended to contain the required provision or to provide a written notice to any consumer to whom the agreement applies. This could occur, when, for example, Bank A is acquiring Bank B after the compliance date specified in § 1040.5(a), and Bank B had entered into pre-dispute arbitration agreements before the compliance date specified in § 1040.5(a). If, as part of the acquisition, Bank A enters into the pre-dispute arbitration agreements of Bank B, Bank A would be required either to ensure the account agreements were amended to contain the provision required by § 1040.4(a)(2)(i), the alternative permitted by § 1040.4(a)(2)(ii), or to provide the notice specified in § 1040.4(a)(2)(iii). See comment 4–1 for examples of when a provider enters into a pre-dispute arbitration agreement.

3. *Notice to consumers.* Section 1040.4(a)(2)(iii) requires a provider that enters into a pre-dispute arbitration agreement that does not contain the provision required by § 1040.4(a)(2)(i) or (ii) to either ensure the agreement is amended to contain a specified provision or to provide any consumers to whom the agreement applies with written notice stating the provision. The notice may be provided in any way that the provider communicates with the consumer, including electronically. The notice may be provided either as a standalone document or included in another notice that the customer receives, such as a periodic statement, to the extent permitted by other laws and regulations.

4(b) Submission of Arbitral Records

1. *Submission by entities other than providers.* Section 1040.4(b) requires providers to submit specified arbitral records to the Bureau. Providers are not required to submit the records themselves if they arrange for another person, such as an arbitration administrator or an agent of the provider, to submit the records on the providers' behalf. The obligation to comply with § 1040.4(b) nevertheless remains on the provider and thus the provider must ensure that the person submits the records in accordance with § 1040.4(b).

4(b)(1) Records To Be Submitted

Paragraph 4(b)(1)(ii)

1. *Determinations that a pre-dispute arbitration agreement does not comply with an arbitration administrator's fairness principles.* Section 1040.4(b)(1)(ii) requires submission to the Bureau of any communication the provider receives related to any arbitration administrator's determination that the provider's pre-dispute arbitration agreement entered into after the date set forth in § 1040.5(a) does not comply with the administrator's fairness principles or rules. The submission of such records is required both when the determination occurs in connection with the filing of a claim in arbitration as well as when it occurs if no claim has been filed. Further, when the determination occurs with respect to a pre-dispute arbitration agreement that the provider does not enter into with a consumer, submission of any communication related to that determination is not required. For example, if the provider submits a prototype pre-dispute arbitration agreement for review by the arbitration administrator and never includes it in any consumer agreements, the pre-dispute arbitration agreement would not be entered into and thus submission to the Bureau of communication related to a determination made by the administrator concerning the pre-dispute arbitration agreement would not be required.

2. *Examples of fairness principles, rules, or similar requirements.* Section 1040.4(b)(1)(ii) requires submission to the Bureau of records related to any administrator's determination that a provider's pre-dispute arbitration agreement violates the administrator's fairness principles, rules, or similar requirements. What constitutes an administrator's fairness principles, rules, or similar requirements should be interpreted broadly. Examples of such principles or rules include, but are not limited to:

i. The American Arbitration Association's Consumer Due Process Protocol; or

ii. JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness.

4(b)(3) Redaction

1. *Redaction by entities other than providers.* Section 1040.4(b)(3) requires providers to redact records before submitting them to the Bureau. Providers are not required to perform the redactions themselves and may arrange for another person, such as an arbitration administrator, or an agent of the provider, to redact the records. The obligation to comply with § 1040.4(b) nevertheless remains on the provider and thus the provider must ensure that the person redacts the records in accordance with § 1040.4(b).

Section 1040.5 Compliance Date and Temporary Exception

5(b) Exception for Pre-Packaged General-Purpose Reloadable Prepaid Card Agreements

Paragraph 5(b)(2)

1. *Examples.* Section 1040.5(b)(2)(ii) requires a provider that has the ability to contact the consumer in writing to provide an amended pre-dispute arbitration agreement to the consumer in writing within 30 days after the issuer has the ability to contact the consumer. A provider is able to contact the consumer when, for example, the provider has the consumer's mailing address or email address.

Dated: May 3, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

Note: The following appendixes will not appear in the Code of Federal Regulations.

Appendix A to Section 1022(b)(2) Analysis—Cases Analyzed

As stated in the Bureau's analysis of the costs, benefits, and impacts of the proposed class rule under Dodd-Frank section 1022(b)(2), the Bureau's estimate of additional federal class litigation costs, benefits, and impacts seeks to use the federal class settlements identified in the Bureau's Study to project the number and size of incremental class action settlements expected to result if the proposal were finalized, as well as other additional costs associated with incremental class litigation. To make that projection the Bureau has sought to confine its analysis to class settlements of class action cases of a type from which providers of consumer financial services are today able to insulate themselves by using an arbitration agreement but would not be able to do so under the proposed rule. For that reason, in making its projections the Bureau excluded two types of federal class settlements that were analyzed in Section 8 of the Study: (1) Class action settlements involving providers or financial products or services which fall outside the scope of the proposal so that providers would still be able to insulate themselves from such cases under the proposal;[1] and (2) class action settlements involving claims of a type that could not have been affected by the presence of an arbitration agreement because there was no contract or privity of contract between the provider and the members of the class, or because of legal constraints on use of arbitration agreements.[2] Examples of the first type include class settlements involving real estate settlement services, insurance firms providing ancillary (add-on) products which take the form of insurance, claims against credit reporting agencies where the claims did not relate to the provision of a consumer report or related information, and class settlements by merchants of claims concerning ATM "sticker" notice requirements previously required by EFTA.[3] Examples of the second type include class settlements by financial institutions of claims by non-customers concerning ATM "sticker" notice requirements previously required by EFTA, and class settlements of claims involving check cashing by merchants. In total 117 of the 419 federal class settlements analyzed in Section 8 of the Study were not used for purposes of these projections. The largest group excluded—over half of the total—were EFTA ATM class settlements. The 117 federal class settlements in the above categories are identified in Appendix B to the proposed rule.

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[1] Persons offering or providing similar products or services might be covered by the proposed rule in some circumstances; the Bureau's estimates are not a legal determination of coverage.

In addition, to avoid potential underestimates of the costs of the proposal in the Bureau's Section 1022(b)(2) Analysis, the Bureau included for purposes of its calculations 10 federal class settlements that were identified as part of the Study but were not include in the results reported in the Study. Seven of these cases involve allegations of "cramming" of third-party charges on consumer telecommunications bills. One case involved long-term auto leasing.[4] The other two cases appeared to be companion class settlements to a payday loan debt collection class settlement that was included in Section 8 of the Study.[5]

After accounting for all of the foregoing adjustments, the list below identifies the resulting set of 312 federal class settlements used in the Section 1022(b)(2) Analysis to project the estimated impact of the proposed rule on federal class litigation against providers, with 10 added cases noted with a "*." (Cases consolidated in the checking account overdraft reordering multidistrict litigation are listed under their original docket numbers, but are consolidated under Docket 1:09–MD–2036–JLK in the U.S. District Court, Southern District of Florida; these settlements are noted with "**.")

Adams v. *LVNV Funding L.L.C.*, 1:09–CV–06469 (N.D. Ill.);

Ajiere v. *Tressler, Soderstrom, Maloney & Priess, L.L.P.*, 1:09–CV–06125 (N.D. Ill.);

Anama v. *AFNI, Inc.*, 1:07–CV–04251 (N.D. Ill.);

Anderson v. *Nationwide Credit, Inc.*, 2:10–CV–03825 (E.D.N.Y.);

Anokhin v. *Continental Service Group, Inc.*, 1:10–CV–02890 (E.D.N.Y.);

Aramburu v. *Healthcare Financial Services, Inc.*, 1:02–CV–06535 (E.D.N.Y.);

Arlozynski v. *Rubin & Debski, P.A.*, 8:09–CV–02321 (M.D. Fla.);

Arroyo v. *Professional Recovery Services, Inc.*, 1:09–CV–00750 (E.D. Cal.);

Arthur v. *SLM Corp.*, 2:10–CV–00198 (W.D. Wash.);

Asch v. *Teller Levit & Silvertrust, P.C.*, 1:00–CV–03290 (N.D. Ill.);

Aspan v. *Hudson & Keyse, L.L.C.*, 1:08–CV–02826 (N.D. Ill.);

Baron v. *Direct Capital Corp.*, 2:09–CV–00669 (W.D. Wash.);

Barrera v. *Resurgence Financial, L.L.C.*, 1:08–CV–03519 (N.D. Ill.);

Bennett v. *Weltman Weinberg & Reis Co.*, 1:07–CV–01818 (N.D. Ohio);

Bertram Robison v. *WFS Financial Inc.*, 8:06–CV–01072 (C.D. Cal.);

Bibb v. *Friedman & Wexler L.L.C.*, 2:07–CV–02173 (C.D. Ill.);

Bicking v. *Law Offices of Rubenstein & Cogan*, 3:11–CV–00078 (E.D. Va.);

Blair v. *Phillips & Cohen Associates, Ltd.*, 1:09–CV–05271 (N.D. Ill.);

Blake v. *Smith Thompson Shaw & Manausa P.A.*, 4:08–CV–00358 (N.D. Fla.);

Blarek v. *Encore Receivable Management Inc.*, 2:06–CV–00420 (E.D. Wis.);

Blodgett v. *Regent Asset Management Solutions, Inc.*, 0:09–CV–03210 (D. Minn.);

Blue v. *Unifund CCR Partners*, 1:09–CV–01777 (N.D. Ill.);

Boettger v. *Sula*, 1:12–CV–00002 (S.D. Iowa);

Bogner v. *Masari Investments, L.L.C.*, 2:08–CV–01511 (D. Ariz.);

Bradshaw v. *Hilco Receivables, L.L.C.*, 1:10–CV–00113 (D. Md.);

Brown v. *Syndicated Office Systems, Inc.*, 9:10–CV–80465 (S.D. Fla);

Buchman v. *Bray & Lunsford, P.A.*, 8:07–CV–01752 (M.D. Fla.);

Burton v. *Northstar Location Services, L.L.C.*, 1:08–CV–05751 (N.D. Ill.);

Cady v. *Codilis & Associates, P.C.*, 1:08–CV–01901 (N.D. Ill.);

Cain v. *Consumer Porfolio Services, Inc.*, 1:10–CV–02697 (N.D. Ill.);

Cain v. *J.P.T. Automotive, Inc.*, 2:05–CV–03805 (E.D.N.Y.);

Calloway v. *Cash America Net of California, L.L.C.*, 5:09–CV–04858 (N.D. Cal.);

Carlsen v. *Freedom Debt Relief L.L.C.*, 2:09–CV–00055 (E.D. Wash.);

Carpenter v. *Persolve, L.L.C.*, 3:07–CV–00633 (S.D. Ill.);

Case v. *Bank of Oklahoma, N.A. (In re Checking Account Overdraft Litig.)***, 5:10–00901–L (W.D. Okla.);

Castellano v. *Global Credit & Collection Corp.*, 2:10–CV–05898 (E.D.N.Y.);

Caston-Palmer v. *NCO Portfolio Management, Inc.*, 1:08–CV–02818 (N.D. Ill.);

Catala v. *Resurgent Capital Services L.P.*, 3:08–CV–02401 (S.D. Cal.);

Cervantes v. *Pacific Bell L.L.C.**, 3:05–CV–01469 (S.D. Cal.);

Cheney v. *Tek-Collect Inc.*, 1:09–CV–08052 (N.D. Ill.);

Chulsky v. *Hudson Law Offices, P.C.*, 3:10–CV–03058 (D.N.J.);

Clendenin v. *Carecredit, L.L.C.*, 1:08–CV–06559 (N.D. Ill.);

Cole v. *Portfolio Recovery Associates, L.L.C.*, 4:08–CV–00036 (D. Mont.);

Cole v. *Wells Fargo Bank N.A.*, 2:07–CV–00916 (W.D. Wash.);

Colello v. *Franklin Collection Service, Inc.*, 1:10–CV–06229 (N.D. Ill.);

Corsick v. *West Asset Management, Inc.*, 5:09–CV–03053 (N.D. Cal.);

Cosgrove v. *Citizens Automobile Finance, Inc.*, 5:09–CV–01095 (E.D. Pa.);

Cotton v. *Asset Acceptance, L.L.C.*, 1:07–CV–05005 (N.D. Ill.);

Cotton v. *National Action Financial Services, Inc.*, 1:10–CV–04709 (N.D. Ill.);

Cox v. *Unifund CCR Partners*, 1:08–CV–01005 (N.D. Ill.);

Craddock v. *Hayt, Hayt & Landau, L.L.C.*, 3:09–CV–00595 (D.N.J.);

Craft v. *North Seattle Community College Foundation*, 3:07–CV–00132 (M.D. Ga.);

Cruz-Martinez v. *Hellmuth & Johnson, P.L.L.C.*, 0:08–CV–04289 (D. Minn.);

Cyrus Ahmad Ebrahimi v. *West Asset Management Inc.*, 8:09–CV–01109 (C.D. Cal.);

Dalton v. *Cardworks Services, L.L.C.*, 1:09–CV–00563 (S.D. Ala);

Davis v. *Riddle & Associates, P.C.*, 2:07–CV–00284 (E.D. Pa.);

Day v. *Persels & Associates, L.L.C.*, 8:10–CV–02463 (M.D. Fla.);

Dee v. *Bank of The West (In re Checking Account Overdraft Litig.)***, 4:10–CV–02736 (N.D. Cal.);

D'Elia v. *First Capital, L.L.C.*, 1:07–CV–06042 (N.D. Ill.);

Diangelo v. *Unifund CCR Partners*, 1:08–CV–03205 (N.D. Ill.);

Dobson v. *Asset Acceptance L.L.C.*, 1:07–CV–06203 (N.D. Ill.);

Donahue v. *Weltman, Weinberg & Reis Co., L.P.A.*, 1:10–CV–04619 (N.D. Ill.);

Douma v. *Law Offices of Mitchell N. Kay P.C.*, 1:09–CV–09957 (S.D.N.Y);

Drinkman, Robert v. *Encore Receivable Management, Inc.*, 3:07–CV–00363 (W.D. Wis.);

Ducharme v. *John C. Heath Attorney at Law P.L.L.C.*, 3:10–CV–02763 (N.D. Cal.);

Duffy v. *Oliphant Financial L.L.C.*, 2:07–CV–03657 (E.D.N.Y.);

Duhadway v. *Credigy Receivables Inc.*, 1:08–CV–00852 (N.D. Ill.);

Durham v. *Continental*, 3:07–CV–01763 (S.D. Cal.);

Eason v. *AFNI, Inc.*, 8:08–CV–00128 (D. Md.);

Eatmon v. *Palisades Collection, L.L.C.*, 2:08–CV–00306 (E.D. Tex.);

Eddie Wayne Hutchison v. *Progressive Management Systems, Inc.*, 2:07–CV–07464 (C.D. Cal.);

Elizabeth Lavalle v. *Chex Systems, Inc.*, 8:08–CV–01383 (C.D. Cal.);

Elsey v. *Pierce & Associates, P.C.*, 1:08–CV–02538 (N.D. Ill.);

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[2] In addition, two debt collection cases were inadvertently included in the set of cases analyzed in Section 8 twice. The Bureau therefore removed the two duplicates from the set of cases analyzed in the Section 1022(b)(2) Analysis.

[3] In addition, a class settlements of a dispute concerning a merchant's disclosures on a prepaid funeral plan was analyzed in Section 8 of the Study, but was not used as a basis for the Bureau's estimate of impacts. As a result the Bureau did not find any merchant TILA creditor (based on allegations of consumer credit with a finance charge) federal class settlements. Such settlements, however, may exist in state courts.

[4] The case materials reviewed by the Bureau do not definitively establish whether the automobile leases at issue would be covered under proposed § 1040.3(a)(2).

[5] These settlements resolved alleged FDCPA violations asserted by the same consumer, in the same court, by the same law firm, in the same month, against a group of defendants involved in an apparently related set of activities in the payday lending market.

Esslinger v. *HSBC Bank USA Inc.*, 2:10–CV–03213 (E.D. Pa.);

Fahme v. *I.C. System, Inc.*, 1:08–CV–01487 (E.D.N.Y.);

Faloney v. *Wachovia Bank, N.A.*, 2:07–CV–01455 (E.D. Pa.);

Fike v. *The Bureaus, Inc.*, 1:09–CV–02558 (N.D. Ill.);

Flores v. *OneWest Bank, F.S.B., d/b/a IndyMac Federal Bank*, 1:09–CV–04042 (N.D. Ill.);

Ford v. *Verisign Inc.**, 3:05–CV–00819 (S.D. Cal.);

Foster v. *Velocity Investments, L.L.C.*, 1:07–CV–00824 (N.D. Ill.);

Foster v. *D.B.S. Collection Agency*, 2:01–CV–00514 (S.D. Ohio);

Foti v. *NCO Financial Systems, Inc.*, 1:04–CV–00707 (S.D.N.Y);

Fragoso v. *HBLC, Inc.*, 1:07–CV–05482 (N.D. Ill.);

Frances Anne Ramsey v. *Prime Healthcare Services Inc.*, 8:08–CV–00820 (C.D. Cal.);

Francisco Marenco v. *Visa Inc.*, 2:10–CV–08022 (C.D. Cal.);

Friedrichs v. *BMW Financial Services L.L.C.*, 4:08–CV–04486–PJH (C.D. Cal.);

Froumy v. *Stark & Stark*, 3:09–CV–04890 (D.N.J.);

Gaalswyk-Knetzke v. *The Receivable Management Services Corp.*, 8:08–CV–00493 (M.D. Fla.);

Gail v. *Law Offices of Weltman Weinberg & Reis Co. L.P.A*, 2:05–CV–00721 (E.D. Wis.);

Gailin R. Brown v. *Dean J. Jungers*, 8:08–CV–00451 (D. Neb.);

Galbraith v. *Resurgent Capital Services*, 2:05–CV–02133 (E.D. Cal.);

Garland v. *Cohen & Krassner*, 1:08–CV–04626 (E.D.N.Y.);

Garland v. *Greenberg*, 1:09–CV–02643 (E.D.N.Y.);

Garnett v. *Lasalle Bank Corp.*, 1:08–CV–01872 (N.D. Ill.);

Garo v. *Global Credit & Collection Corp.*, 2:09–CV–02506 (D. Ariz.);

Gaudalupe v. *Miller Law Offices, P.L.L.C.*, 1:06–CV–03044 (E.D.N.Y.);

Gillespie v. *Equifax Inc.*, 1:05–CV–00138 (N.D. Ill.);

Goodie v. *Weinstock, Friedman & Friedman, P.C.*, 1:10–CV–01870 (D. Md.);

Grannan v. *Alliant Law Group, P.C.*, 5:10–CV–02803 (N.D. Cal.);

Gravina v. *Client Services, Inc.*, 2:08–CV–03634 (E.D.N.Y.);

Gray v. *Mobile Messenger**, 0:08–CV–61089 (S.D. Fla);

Griffin v. *Capital One Bank*, 8:08–CV–00132 (M.D. Fla.);

Guidos v. *Northstar Education Finance, Inc.*, 0:08–CV–04837 (D. Minn.);

Gunther v. *Capital One, N.A.*, 2:09–CV–02966 (E.D.N.Y.);

Gutierrez v. *LVNV Funding, L.L.C.*, 3:08–CV–00225 (W.D. Tex.);

Haidee Estrella v. *Freedom Financial Network L.L.C.*, 3:09–CV–03156 (N.D. Cal.);

Halbert v. *Biehl & Biehl, Inc.*, 1:09–CV–06221 (N.D. Ill.);

Halbert v. *Creditors Interchange Receivable Management, L.L.C.*, 1:09–CV–06207 (N.D. Ill.);

Hale v. *AFNI, Inc.*, 1:08–CV–03918 (N.D. Ill.);

Hall v. *Bronson & Migliaccio, L.L.P.*, 1:07–CV–00255 (S.D. Ohio);

Hall v. *Capital One Auto Finance, Inc.*, 1:08–CV–01181 (N.D. Ohio);

Harris v. *D. Scott Carruthers & Associates*, 8:09–CV–00154 (D. Neb.);

Hartt v. *Flagship Credit Corp.*, 2:10–CV–00822 (E.D. Pa.);

Hauk v. *LVNV Funding, L.L.C.*, 1:09–CV–03238 (D. Md.);

Hearsh v. *OSI Collection Services, Inc.*, 1:07–CV–00097 (N.D. Ill.);

Henry Mcmullen v. *Jennings & Valancy, P.A.* v. *Jennings & Valancy, P.A.*, 0:10–CV–60050 (S.D. Fla);

Herkert v. *Midland Funding NNC–2 Corp.*, 1:08–CV–00760 (N.D. Ill.);

Holman v. *Student Loan Xpress, Inc.*, 8:08–CV–00305 (M.D. Fla.);

Horton v. *IQ Telecom, Inc.*, 1:07–CV–02478 (N.D. Ill.);

Housenkamp v. *Weltman, Weinberg & Reis, Co. of Michigan*, 1:09–CV–10613 (E.D. Mich.);

Howell v. *Capital Management Services L.P.*, 1:10–CV–00184 (N.D. Ind.);

Huffman v. *Zwicker & Associates, P.C.*, 1:07–CV–01369 (E.D. Cal.);

Hughes v. *Harvest Credit Management VII, L.L.C.*, 1:08–CV–03685 (N.D. Ill.);

Hunt v. *Check Recovery Systems, Inc.*, 4:05–CV–04993 (N.D. Cal.);

Hurwitz v. *Ameriquest Recovery Services, L.L.C.*, 1:06–CV–01440 (E.D.N.Y.);

In re: Chase Bank USA, N.A. "Check Loan" Contract Litigation, 3:09–MD–02032 (N.D. Cal.);

In re: Currency Conversion Fee Antitrust Litigation, 1:01–MD–01409 (S.D.N.Y);

In re: Lifelock, Inc., Marketing & Sales Practices Litigation, 2:08–MD–01977 (D. Ariz.);

Jackson v. *Metscheck, Inc.*, 1:11–CV–02735 (N.D. Ga.);

Jancik v. *Cavalry Portfolio Services L.L.C.*, 0:06–CV–03104 (D. Minn.);

Janice J. Abat v. *JPMorgan Chase & Co.*, 8:07–CV–01476 (C.D. Cal.);

Jenkins v. *Hyundai Motor Finance Co.*, 2:04–CV–00720 (S.D. Ohio);

Johnson v. *Kleinsmith & Associates P.C.*, 3:09–CV–00003 (D.N.D.);

Johnson v. *Law Offices of Brachfeld & Associates*, 8:09–CV–00336 (D. Neb.);

Johnson v. *Midland Funding*, 1:09–CV–02391 (D. Md.);

Jones v. *Client Services, Inc.*, 2:10–CV–00343 (E.D. Pa.);

Jones v. *Hoffman Swartz**, 1:10–CV–07632 (N.D. Ill.);

Jones v. *National Credit Adjusters, L.L.C.*, 1:10–CV–08027 (N.D. Ill.);

Jones v. *Rory Vohwinkel**, 1:10–CV–07954 (N.D. Ill.);

Julks v. *Atlantic Funding Group, L.L.C.*, 1:06–CV–11704 (D. Mass.);

Kadlec v. *Weltman, Weinberg & Reis Co., L.P.A.*, 3:10–CV–00223 (W.D. Tex.);

Kalish v. *Kapp & Kalamotousakis, L.L.P.*, 1:06–CV–04933 (S.D.N.Y);

Keck v. *Bank of America*, 3:08–CV–01219 (N.D. Cal.);

Kern v. *LVNV Funding L.L.C.*, 1:09–CV–02202 (N.D. Ill.);

Kight v. *Eskanos & Adler, P.C.*, 3:05–CV–01999 (S.D. Cal.);

Kindler v. *Mitsubishi Motors Credit of America, Inc.*, 4:09–CV–00315 (W.D. Mo.);

King v. *United SA Federal Credit Union*, 5:09–CV–00937 (W.D. Tex.);

Kiousis v. *Encore Receivable Management, Inc.*, 1:11–CV–00033 (N.D. Ill.);

Kirk v. *Gobel*, 2:08–CV–00344 (E.D. Wash.);

Kish v. *Suntrust Banks, Inc.*, 1:06–CV–00968 (N.D. Ga.);

Kistner v. *Law Offices of Michael P. Margelefsky, L.L.C.*, 3:05–CV–07238 (N.D. Ohio);

Krech v. *Efunds Corp.*, 1:08–CV–00985 (N.D. Ill.);

Lacour v. *Whitney Bank*, 8:11–CV–01896 (M.D. Fla.);

Lagana v. *Stephen Einstein & Associates, P.C.*, 1:10–CV–04456 (S.D.N.Y);

Landrum v. *Meadows Credit Union*, 4:08–CV–00441 (W.D. Mo.);

Langendorfer v. *Kaufman*, 1:10–CV–00797 (S.D. Ohio);

Lantrip v. *Dodeka L.L.C.*, 2:08–CV–00476 (E.D. Tex.);

Larsen v. *Union Bank, N.A. (In re Checking Account Overdraft Litig.)***, 4:09–CV–3250 (N.D. Cal.);

Lau v. *Arrow Financial Services, L.L.C.*, 1:06–CV–03141 (N.D. Ill.);

Laura Hoffman v. *Citibank (South Dakota) N.A.*, 8:06–CV–00571 (C.D. Cal.);

Layman v. *Forster*, 1:09–CV–00733 (S.D. Ind.);

Lefoll v. *Key Hyundai of Manchester L.L.C.*, 3:08–CV–01593 (D. Conn.);

Lemieux v. *Global Credit & Collection Corp.*, 3:08–CV–01012 (S.D. Cal.);

Lewis v. *Northeast Credit & Collections, Inc.*, 7:07–CV–11593 (S.D.N.Y);

Lige v. *Titanium Solutions Inc.*, 2:06–CV–00400 (N.D. Ind.);

Limpert v. *Cambridge Credit Counseling Corp.*, 2:03–CV–05986 (E.D.N.Y.);

Lofton v. *Bank of America Corp.*, 3:07–CV–05892 (N.D. Cal.);

Lopez v. *JPMorgan Chase Bank (In re Checking Account Overdraft Litig.)***, 1:09–CV–23127–JLK (S.D. Fla);

Louie v. *Weltman, Weinberg & Reis Co., L.P.A.*, 1:11–CV–01758 (N.D. Ill.);

Luxford v. *Resurgent Capital Services, L.P.*, 4:09–CV–02809 (N.D. Cal.);

Makson v. *Portfolio Recovery Associates, L.L.C.*, 3:07–CV–00582 (E.D. Va.);

Margulin v. *Trojan Professional Services Inc.*, 1:08–CV–07052 (N.D. Ill.);

Markey v. *Robert Joseph Williams Co., L.L.C.*, 1:08–CV–04304 (D.N.J.);

Marshall-Mosby v. *Blitt & Gaines, P.C.*, 1:08–CV–00758 (N.D. Ill.);

Martin v. *Cavalry Portfolio Services, L.L.C.*, 1:07–CV–04745 (N.D. Ill.);

Martin v. *J.C. Christensen & Associates, Inc.*, 1:09–CV–05726 (N.D. Ill.);

Martinez v. *Elite Recovery Services, Inc.*, 3:08–CV–00967 (D.N.J.);

Martinez v. *FMS, Inc.*, 3:07–CV–01157 (M.D. Fla.);

Martsolf v. *JBC Legal Group, P.C.*, 1:04–CV–01346 (M.D. Pa.);

Mathena v. *Webster Bank N.A.*, 3:10–CV–01448 (D. Conn.);

Matthew v. *Premium Asset Recovery Corp.*, 1:07–CV–04306 (N.D. Ill.);

Mayfield v. *Memberstrust Credit Union*, 3:07–CV–00506 (E.D. Va.);

Mckenna v. *Pollack & Rosen, P.A.*, 0:11–CV–62134 (S.D. Fla);

Mcnulty v. *Edwin A. Abrahamsen & Associates. P.C.*, 2:08–CV–00422 (W.D. Pa.);

Meselsohn v. *First National Collection Bureau, Inc.*, 1:06–CV–03324 (E.D.N.Y.);

Meselsohn v. *Lerman*, 2:06–CV–04115 (E.D.N.Y.);

Mesick v. *Freedman, Anselmo, Lindberg & Rappe, L.L.C.*, 1:08–CV–02695 (N.D. Ill.);

Mikovic v. *Financial Medical Systems, Inc.*, 2:10–CV–02457 (E.D.N.Y.);

Milam v. *Credigy Receivables, Inc.*, 1:07–CV–04417 (N.D. Ill.);

Miller v. *Midland Credit Management, Inc.*, 1:08–CV–00780 (N.D. Ill.);

Milo v. *Barneys New York, Inc.*, 1:10–CV–03133 (S.D.N.Y);

Mitchem v. *Illinois Collection Service, Inc.*, 1:09–CV–07274 (N.D. Ill.);

Mitchem v. *Northstar Location Services L.L.C.*, 1:09–CV–06711 (N.D. Ill.);

Moorehead v. *Franklin Collection Service, Inc.*, 1:11–CV–05936 (N.D. Ill.);

Muha v. *Encore Receivable Management Inc.*, 2:05–CV–00940 (E.D. Wis.);

Mund v. *EMCC, Inc.*, 0:08–CV–00936 (D. Minn.);

Murphy v. *Capital One Bank*, 1:08–CV–00801 (N.D. Ill.);

Navarrette v. *TD Banknorth, N.A.*, 5:07–CV–02767 (N.D. Cal.);

Nobles v. *MBNA Corp.*, 3:06–CV–03723 (N.D. Cal.);

Noel Frederick v. *FIA Card Services, N.A.*, 2:09–CV–03419 (C.D. Cal.);

Norman v. *Franklin Collection Services, Inc.*, 1:08–CV–00177 (N.D. Miss.);

O'Connor v. *AR Resources Inc*, 3:08–CV–01703 (D. Conn.);

Pabon-Aponte v. *Empresas Berrios, Inc.*, 3:06–CV–01865 (D.P.R.);

Palmer v. *Far West Collection Services, Inc.*, 5:04–CV–03027 (N.D. Cal.);

Parlier v. *LVNV Funding, L.L.C.*, 1:11–CV–01586 (N.D. Ill.);

Pascal v. *Feigelson*, 7:08–CV–00550 (S.D.N.Y);

Passafiume v. *National Recovery Agency, Inc.*, 2:10–CV–00796 (E.D.N.Y.);

Pawelczak v. *Bureau of Collection Recovery, L.L.C.*, 1:11–CV–01415 (N.D. Ill.);

Perez v. *Complete Collection Service of South Florida, Inc.*, 0:09–CV–61124 (S.D. Fla);

Perry v. *Harris Financial Management, L.L.C.*, 1:07–CV–05177 (N.D. Ill.);

Peterson v. *Resurgent Capital Services L.P.*, 2:07–CV–00251 (N.D. Ind.);

Philip Rannis v. *Fair Credit Lawyers Inc.*, 5:06–CV–00373 (C.D. Cal.);

Poet v. *Security Credit Systems, Inc.*, 1:10–CV–01068 (D.N.J.);

Powell v. *Procollect, Inc.*, 3:11–CV–00846 (N.D. Tex.);

Pozzuolo v. *NCO Financial Systems, Inc.*, 2:07–CV–01295 (E.D. Pa.);

Prescott v. *Autovest, L.L.C.*, 2:11–CV–00219 (E.D. Tex.);

Prieto v. *HBLC, Inc.*, 1:08–CV–02718 (N.D. Ill.);

Quesenberry v. *Alliant Law Group P.C.*, 4:09–CV–00414 (E.D. Tex.);

Quinones-Malone v. *Pellegrino & Feldstein, L.L.C.*, 2:08–CV–03295 (D.N.J.);

Quiroz v. *Revenue Production Management, Inc.*, 1:08–CV–00879 (N.D. Ill.);

Radicchi v. *Palisades Collection L.L.C.*, 1:08–CV–02607 (E.D.N.Y.);

Ramirez v. *Green Tree Servicing L.L.C.*, 1:09–CV–01195 (N.D. Ill.);

Ramirez v. *Palisades Collection, L.L.C.*, 1:07–CV–03840 (N.D. Ill.);

Rayl v. *Moores*, 1:09–CV–00554 (S.D. Ind.);

Reed v. *Icon Fitness & Arvest Bank & Dent-A-Med*, 3:08–CV–00677 (E.D. Va.);

Reeves v. *New Horizons Financial Services, Inc.*, 0:08–CV–04866 (D. Minn.);

Reichel v. *Academy Collection Service Management, L.L.C., n/k/a Monarch Recovery Management, Inc.*, 1:10–CV–01119 (C.D. Ill.);

Rice v. *Praxis Financial Solutions, Inc.*, 1:11–CV–08488 (N.D. Ill.);

Richard v. *West Asset Management, Inc.*, 1:09–CV–03864 (N.D. Ill.);

Richardson v. *Allied Interstate, Inc.*, 3:09–CV–02265 (D.N.J.);

Ritthaler v. *Riddle & Associates, P.C.*, 1:08–CV–06920 (N.D. Ill.);

Robinson v. *Thompson*, 3:10–CV–04143 (D.N.J.);

Rodriguez v. *Sallie Mae (SLM) Corp.*, 3:07–CV–01866 (D. Conn.);

Rosenau v. *Unifund Corp.*, 2:06–CV–01355 (E.D. Pa.);

Rubinstein v. *Department Stores National Bank*, 1:08–CV–01596 (S.D.N.Y);

Russo v. *Puckett & Redford P.L.L.C.*, 2:09–CV–00433 (W.D. Wash.);

Ruth v. *Triumph Partnerships L.L.C.*, 3:06–CV–50042 (N.D. Ill.);

Rutha Smith v. *Heritage Financial Recovery Services*, 2:10–CV–03922 (D.N.J.);

Ryder v. *Diversified Ambulance Billing L.L.C.*, 8:09–CV–02058 (M.D. Fla.);

Ryder v. *Equifax Information Services, L.L.C.*, 1:09–CV–07626 (N.D. Ill.);

Sachar v. *Iberiabank Corp. (In re Checking Account Overdraft Litig.)***, 1:11–CV–22844–JLK (S.D. Fla);

Sadler v. *Midland Credit Management, Inc.*, 1:06–CV–05045 (N.D. Ill.);

Sanchez v. *Northstar Location Services, L.L.C.*, 1:08–CV–04885 (N.D. Ill.);

Santoro v. *Aargon Agency, Inc.*, 2:07–CV–01003 (D. Nev.);

Sargent v. *Hibbard*, 1:08–CV–01463 (S.D. Ind.);

Sargent v. *St. Vincent Hospital & Health Care Center, Inc.*, 1:08–CV–01464 (S.D. Ind.);

Savedoff v. *Access Group, Inc.*, 1:06–CV–00135 (N.D. Ohio);

Scally v. *Hilco Receivables*, 1:04–CV–03035 (N.D. Ill.);

Schulte v. *Fifth Third Bank*, 1:09–CV–06655 (N.D. Ill.);

Seawell v. *Universal Fidelity Corp.*, 2:05–CV–00479 (E.D. Pa.);

Sergio Cedeno v. *Bureau of Collection Recovery Inc.*, 8:10–CV–01960 (C.D. Cal.);

Serren v. *LVNV Funding, L.L.C.*, 1:06–CV–03574 (N.D. Ill.);

Shane v. *Ferrucci*, 1:11–CV–00946 (S.D. Ind.);

Shelton v. *Crescent Bank & Trust*, 1:08–CV–01799 (D. Md.);

Shippey v. *Weltman, Weinberg & Reis Co., L.P.A.*, 3:10–CV–00303 (W.D. Pa.);

Short v. *Anastasi & Associates*, 0:11–CV–01612 (D. Minn.);

Silva v. *Patenaude & Felix*, 5:08–CV–03019 (N.D. Cal.);

Sims v. *Cellco Partnership**, 3:07–CV–01510 (N.D. Cal.);

Skusenas v. *Linebarger, Goggan, Blair & Sampson, L.L.P.*, 1:10–CV–08119 (N.D. Ill.);

Slade v. *Law Offices of Daniel C Consuegra P.L.*, 4:11–CV–00005 (N.D. Fla.);

Smith v. *Allied Interstate, Inc.*, 1:08–CV–06986 (S.D.N.Y);

Smith v. *GB Collects, L.L.C.*, 1:09–CV–05917 (D.N.J.);

Smith v. *Lyons, Doughty & Veldhuis, P.C.*, 1:07–CV–05139 (D.N.J.);

Smith v. *Professional Billing & Management Services, Inc.*, 1:06–CV–04453 (D.N.J.);

Smith v. *Syndicated Office Systems, Inc.*, 3:07–CV–00131 (W.D. Tex.);

Soutter v. *Equifax Information Services, L.L.C.*, 2:10–CV–03574 (E.D. Pa.);

Starzynski v. *Friedman & Wexler, L.L.C.*, 1:07–CV–01254 (N.D. Ill.);

Steele v. *Paypal, Inc.*, 1:05–CV–01720 (E.D.N.Y.);

Stern v. *Cingular**, 2:05–CV–08842 (C.D. Cal.);

Swain v. *Cach, L.L.C.*, 5:08–CV–05562 (N.D. Cal.);

Sylverne v. *Data Search N.Y., Inc.*, 1:08–CV–00031 (N.D. Ill.);

Sypniewski v. *NCO Financial Systems, Inc.*, 1:08–CV–00239 (N.D. Ill.);

Taylor v. *Apex Financial Management L.L.C.*, 2:09–CV–00229 (E.D. Tex.);

Tenerelli v. *Cardworks Servicing, L.L.C.*, 1:09–CV–02651 (N.D. Ill.);

Thomas v. *CitiFinancial Auto Ltd.*, 1:07–CV–00721 (D. Md.);

Thornton v. *Belkin, Burden, Wenig & Goldman, L.L.P.*, 1:09–CV–05901 (S.D.N.Y);

Thornton v. *Midland Credit Management, Inc.*, 1:09–CV–05685 (N.D. Ill.);

Tidwell v. *Asset Recovery Solutions, L.L.C.*, 1:09–CV–04022 (E.D.N.Y.);

Tornes v. *Bank of America (In re: Checking Account Overdraft Litig)***, 1:08–CV–23323–JLK (S.D. Fla);

Trempe v. *HBLC, Inc.*, 1:07–CV–05945 (N.D. Ill.);

Trombley v. *National City Bank*, 1:10–CV–00232 (D.D.C.);

Urbaniak v. *Asset Acceptance, L.L.C.*, 1:08–CV–00551 (N.D. Ill.);

Urbaniak v. *Credigy Receivables, Inc.*, 1:07–CV–06326 (N.D. Ill.);

Utility Consumers' Action Network v. *Sprint Solutions**, 3:07–CV–02231 (S.D. Cal.);

Valdez v. *Sprint Nextel**, 3:06–CV–07587 (N.D. Cal.);

Vallejo, Jr. v. *National Credit Adjusters L.L.C.*, 2:10–CV–00103 (N.D. Ind.);

Varela v. *Moskowitz, Mandell, Salim & Simowitz, P.A.*, 0:07–CV–61143 (S.D. Fla);

Vasilas v. *Subaru of America**, 1:07–CV–02374 (S.D.N.Y);

Villaflor v. *Equifax Information Services, L.L.C.*, 3:09–CV–00329 (N.D. Cal.);

Villasenor v. *American Signature, Inc.*, 1:06–CV–05493 (N.D. Ill.);

Vincent v. *Wolpoff & Abramson, L.L.P.*, 2:08–CV–00423 (W.D. Pa.);

Voris v. *Resurgent Capital Services L.P.*, 3:06–CV–02253 (S.D. Cal.);

Walker v. *Discover Financial Services, Inc.*, 1:10–CV–06994 (N.D. Ill.);

Wang v. *Asset Acceptance L.L.C.*, 3:09–CV–04797 (N.D. Cal.);

Wanty v. *Messerli & Kramer P.A.*, 2:05–CV–00350 (E.D. Wis.);

Washington v. *Unifund CCR Partners*, 1:07–CV–00150 (N.D. Ill.);

Watts v. *Capital One Auto Finance, Inc.*, 1:07–CV–03477 (D. Md.);

Weinstein v. *Asset Acceptance L.L.C.*, 1:07–CV–05967 (N.D. Ill.);

Werts v. *Midland Funding, L.L.C.*, 1:09–CV–02311 (D.D.C.);

Wess v. *Storey*, 2:08–CV–00623 (S.D. Ohio);

Whelan v. *Keybank U.S.A., N.A.*, 1:03–CV–01118 (N.D. Ohio);

Whitehead-Bey v. *Advantage Assets II, Inc.*, 2:11–CV–05199 (E.D. Pa.);

Wilfong v. *National Capital Management, L.L.C.*, 1:12–CV–02979 (N.D. Ill.);

Wilhelm v. *Allied Interstate, Inc.*, 1:07–CV–01497 (N.D. Ill.);

Williams v. *Brock & Scott, P.L.L.C.*, 1:09–CV–00722 (M.D.N.C.);

Williamson v. *Unifund CCR Partners*, 8:08–CV–00218 (D. Neb.);

Wilson v. *Cybrcollect, Inc.*, 5:09–CV–00963 (N.D. Cal.);

Woldman v. *Chase Bank U.S.A., N.A.*, 1:10–CV–00865 (N.D. Ill.);

Wysocki v. *City National Bank*, 1:10–CV–03850 (N.D. Ill.);

Ybarrondo v. *NCO Financial Systems*, 3:05–CV–02057 (S.D. Cal.);

Zirogiannis v. *Professional Recovery Consultants, Inc.*, 2:11–CV–00887 (E.D.N.Y.);

Zugay v. *Professional Recovery Consultants, Inc.*, 1:10–CV–01944 (E.D.N.Y.).

Appendix B to Section 1022(b)(2) Analysis—Cases Not Used in Projecting Incremental Costs From Proposal

Adighibe v. *Clifton Telecard Alliance (CTA)*, 2:07–CV–01250 (D.N.J.);

Angela Minor v. *Real Page, Inc.*, 4:09–CV–00439 (E.D. Tex.);

Anthony v. *Fifth Third Bank*, 1:08–CV–04359 (N.D. Ill.);

Barandas v. *Old Republic National Title Insurance Co.*, 2:06–CV–01750 (D.N.J.);

Barlo v. *First Financial Bank N.A.*, 2:10–CV–00235 (N.D. Ind.);

Barreto v. *Center Bank*, 1:10–CV–06554 (N.D. Ill.);

Bernal v. *American Money Centers Inc.*, 2:05–CV–01327 (E.D. Wis.);

Blaylock v. *First American Title Insurance Co.*, 2:06–CV–01667 (W.D. Wash.);

Boecherer v. *Burling Bank*, 1:08–CV–01332 (N.D. Ill.);

Bowen v. *Groome*, 3:11–CV–00139 (S.D. Ill.);

Brake v. *Highland Corp.*, 3:11–CV–00620 (M.D. Tenn.);

Bruner v. *America United Bank & Trust Co.*, 1:08–CV–00124 (N.D. Ill.);

Castro v. *Old Republic National Title Insurance Co.*, 3:06–CV–00784 (D. Conn.);

Charles v. *Lawyers Title Insurance Corp.*, 2:06–CV–02361 (D.N.J.);

Chernyavsky v. *Inland Bank & Trust*, 1:08–CV–04009 (N.D. Ill.);

Clay William Fisher v. *Finance America*, 8:05–CV–00888 (C.D. Cal.);

Cole v. *Automated Financial, L.L.C.*, 1:11–CV–03299 (N.D. Ill.);

Couch v. *Indians, Inc.*, 1:11–CV–00963 (S.D. Ind.);

Cummings v. *Resource Federal Credit Union*, 1:10–CV–01309 (W.D. Tenn.);

Donald R Chastain v. *Union Security Life Insurance Co.*, 2:06–CV–05885 (C.D. Cal.);

Dover v. *GNC Community Federal Credit Union*, 2:09–CV–00810 (W.D. Pa.);

Dragotta v. *Northwest Bancorp, Inc.*, 2:09–CV–00632 (W.D. Pa.);

Dragotta v. *West View Savings Bank*, 2:09–CV–00627 (W.D. Pa.);

Drexler v. *George Loukas Real Estate, Inc.*, 1:07–CV–05471 (N.D. Ill.);

Ellens v. *Genworth Life & Annuity Insurance Co.*, 1:08–CV–02640 (N.D. Ohio);

Escalante v. *Lincoln Park Savings Bank*, 1:08–CV–06152 (N.D. Ill.);

Escalante v. *Travelex Currency Services, Inc.*, 1:09–CV–02209 (N.D. Ill.);

Estate of Frank Townsend v. *Protective Life Insurance Co.*, 1:10–CV–02365 (N.D. Ohio);

Evans & Green, L.L.P. v. *Mortgage Depot, L.L.C.*, 6:07–CV–03275 (W.D. Mo.);

Ewing v. *Administrative Systems Inc.*, 2:08–CV–00797 (W.D. Wash.);

Flores v. *Bank*, 1:07–CV–06403 (N.D. Ill.);

Gaylor v. *Comala Credit Union*, 2:10–CV–00725 (M.D. Ala.);

Gendernalik v. *Fred Hunter Memorial Sevices, Inc.*, 0:08–CV–60274 (S.D. Fla);

Gibilante v. *Wachovia Mortgage Corp.*, 2:07–CV–02236 (E.D. Pa.);

Goldshteyn v. *Argonne Credit Union*, 1:10–CV–05402 (N.D. Ill.);

Greiff v. *First Commonwealth Bank*, 2:10–CV–01224 (W.D. Pa.);

Greiff v. *Jamestown Area Community Federeal Credit Union*, 1:10–CV–00404 (W.D.N.Y);

Hall v. *Vitran Express, Inc.*, 1:09–CV–00800 (N.D. Ohio);

Hamilton v. *Wells Fargo Bank, N.A.*, 4:09–CV–04152 (N.D. Cal.);

Hansen v. *Monumental Life Insurance Co.*, 3:05–CV–01905 (D. Conn.);

Harrison v. *First Independence Bank*, 5:09–CV–12684 (E.D. Mich.);

Harrison v. *Flagstar Bank F.S.B.*, 5:09–CV–12687 (E.D. Mich.);

Hart v. *Guardian Credit Union*, 2:10–CV–00855 (M.D. Ala.);

Hays v. *Commonwealth Land Title Insurance Co.*, 3:10–CV–05336 (N.D. Cal.);

Helkowski v. *Clearview Federal Credit Union*, 2:09–CV–00609 (W.D. Pa.);

Howard v. *Canandaigua National Bank & Trust*, 6:09–CV–06513 (W.D.N.Y);

Hrnyak v. *Mid-West National Life Insurance Co. of Tennessee*, 1:08–CV–02642 (N.D. Ohio);

In Re: Trans Union Corp. v. *Trans Union L.L.C.*, 1:00–CV–04729 (N.D. Ill.);

Jackman v. *Global Cash Access Holdings, Inc.*, 2:09–CV–00897 (W.D. Pa.);

Katz v. *Palisades Federal Credit Union*, 7:09–CV–01745 (S.D.N.Y);

Kinder v. *Elga Credit Union*, 5:10–CV–11549 (E.D. Mich.);

Kinder v. *Lenco Credit Union*, 5:11–CV–11655 (E.D. Mich.);

Kistner v. *Corus Bank, N.A.*, 1:08–CV–02797 (N.D. Ill.);

Lengrand v. *Wellpoint, Inc.*, 3:11–CV–00333 (E.D. Va.);

Lentini v. *Fidelity National Title Insurance Co. of New York*, 3:06–CV–00572 (D. Conn.);

Lindsey v. *American Security Insurance Co.*, 2:08–CV–00126 (E.D. Ky.);

Lindsey v. *Unitrin Auto & Home Insurance Co.*, 2:08–CV–00127 (E.D. Ky.);

Lockwood v. *Certegy Check Services, Inc.*, 8:07–CV–01434 (M.D. Fla.);

Louisma v. *Automated Financial, LLC*, 1:11–CV–02104 (N.D. Ill.);

Mains v. *DB Direct*, 2:07–CV–02037 (C.D. Ill.);

Markoff v. *Independent Bank Corp.*, 2:09–CV–12639 (E.D. Mich.);

Marsh v. *ATM Capital Management, Inc.*, 1:07–CV–05808 (N.D. Ill.);

Marsi Zintel v. *Pacific Community Federal Credit Union*, 2:09–CV–05517 (C.D. Cal.);

Mathias v. *Carver Federal Savings Bank*, 1:08–CV–05041 (E.D.N.Y.);

McCormick v. *7–11, Inc.*, 3:06–CV–00127 (N.D. Tex.);

McGill v. *Parker Centennial Assurance Co.*, 1:08–CV–02766 (N.D. Ohio);

McKinnie v. *JP Morgan Chase Bank N.A.*, 2:07–CV–00774 (E.D. Wis.);

Mendelovits v. *Albany Bank & Trust Co., N.A.*, 1:08–CV–03870 (N.D. Ill.);

Mills v. *HEB Grocery Co., L.P.*, 4:10–CV–04974 (S.D. Tex.);

Neals v. *Mortgage Guarantee Insurance Corp.*, 2:10–CV–01291 (W.D. Pa.);

Nguyen v. *South Central Bank*, 1:11–CV–02612 (N.D. Ill.);

Nicholas v. *RBS Citizens, N.A.*, 2:09–CV–01697 (E.D.N.Y.);

Nolf v. *Allegheny Valley Bank of Pittsburgh*, 2:09–CV–00645 (W.D. Pa.);

Ori v. *Fifth Third Bank*, 2:08–CV–00432 (E.D. Wis.);

Orser v. *Select Portfolio Servicing Inc.*, 2:05–CV–01507 (W.D. Wash.);

Pamela Phillips v. *Accredited Home Lenders Holding Co.*, 2:06–CV–00057 (C.D. Cal.);

Parker v. *First-Citizens Bank & Trust Co.*, 3:09–CV–00588 (M.D. Tenn.);

Patrick Mahoney v. *Fidelity National Title Co.*, 8:08–CV–00561 (C.D. Cal.);

Paul Zintel v. *Ironstone Bank*, 8:09–CV–00867 (C.D. Cal.);

Pavle v. *Arizona Central Credit Union*, 4:10–CV–00234 (D. Ariz.);

Perez v. *First American Title Insurance Co.*, 2:08–CV–01184 (D. Ariz.);

Piontek v. *Baltimore County Savings Bank, F.S.B.*, 1:10–CV–03101 (D. Md.);

Piontek v. *CU Service Network, L.L.C.*, 8:10–CV–01202 (D. Md.);

Piontek v. *Frederick County Bank*, 8:10–CV–01912 (D. Md.);

Piontek v. *VIST Financial Corp.*, 5:10–CV–02715 (E.D. Pa.);

Polevoy v. *Devon Bank*, 1:08–CV–04822 (N.D. Ill.);

Popovic v. *Dollar Bank*, 2:10–CV–00432 (W.D. Pa.);

Popovic v. *USX Federal Credit Union*, 2:09–CV–00631 (W.D. Pa.);

Press v. *Catskill Hudson Bank*, 7:08–CV–11335 (S.D.N.Y);

Reich v. *GCM Federal Credit Union*, 0:10–CV–00606 (D. Minn.);

Richardson v. *Harris County Federal Credit Union*, 4:11–CV–01550 (S.D. Tex.);

Richardson v. *Houston Federal Credit Union*, 4:10–CV–03768 (S.D. Tex.);

Rodriguez v. *Corus Bank, N. A.*, 1:08–CV–03511 (N.D. Ill.);

Rodriguez v. *United Title Co.*, 3:05–CV–01019 (S.D. Cal.);

Rushton v. *First National Bank in Cooper*, 4:11–CV–00038 (E.D. Tex.);

Ryals v. *Hireright Solutions, Inc.*, 3:09–CV–00625 (E.D. Va.);

Ryan v. *ATM Link, Inc.*, 1:09–CV–07747 (N.D. Ill.);

Sebrow v. *HSBC Bank, U.S.A., N.A.*, 2:08–CV–03162 (E.D.N.Y.);

Shaked v. *Wachovia Bank, N.A.*, 7:08–CV–06984 (S.D.N.Y);

Shelton v. *Crescent Bank & Trust*, 1:08–CV–01799 (D. Md.);

Siragusa v. *Advance Financial Federal Credit Union*, 2:09–CV–00328 (N.D. Ind.);

Siragusa v. *Corporate America Family Credit Union*, 1:08–CV–04007 (N.D. Ill.);

Siragusa v. *North Community Bank*, 1:09–CV–02687 (N.D. Ill.);

Smith v. *Credit Union 1*, 1:07–CV–05939 (N.D. Ill.);

Stone v. *Corus Bank, N.A.*, 1:08–CV–01746 (N.D. Ill.);

Stone v. *Marquette Bank*, 1:08–CV–06388 (N.D. Ill.);

Syran v. *LexisNexis Group*, 3:05–CV–00909 (S.D. Cal.);

Taylor v. *Apex Financial Management L.L.C.*, 2:09–CV–00229 (E.D. Tex.);

Tedrow v. *Cowles*, 2:06–CV–00637 (S.D. Ohio);

Thomas v. *Investex Credit Union*, 4:11–CV–00354 (S.D. Tex.);

Thomas v. *Mid-Missouri Bank*, 6:10–CV–03139 (W.D. Mo.);

Tovar v. *Plaza Bank*, 1:08–CV–04008 (N.D. Ill.);

Vasuki Parthiban v. *GMAC Mortgage Corp.*, 8:05–CV–00768 (C.D. Cal.);

Webb v. *Cleverbridge, Inc.*, 1:11–CV–04141 (N.D. Ill.);

Wike v. *Vertrue, Inc.*, 3:06–CV–00204 (M.D. Tenn.);

Williams v. *Staffing Solutions Southeast, Inc.*, 1:10–CV–00956 (N.D. Ill.);

Witriol v. *LexisNexis Group*, 3:06–CV–02360 (S.D. Cal.).

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Part III

Office of Personnel Management

SES Positions That Were Career Reserved During CY 2015; Notice

OFFICE OF PERSONNEL MANAGEMENT

SES Positions That Were Career Reserved During CY 2015

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: As required by section 3132(b)(4) of title 5, United States Code, this gives notice of all positions in the Senior Executive Service (SES) that were career reserved during calendar year 2015.

FOR FURTHER INFORMATION CONTACT: Eloise Jefferson, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: Below is a list of titles of SES positions that were career reserved at any time during calendar year 2015, regardless of whether those positions were still career reserved as of December 31, 2015. Section 3132(b)(4) of title 5, United States Code, requires that the head of each agency publish such lists by March 1 of the following year. The Office of Personnel Management is publishing a consolidated list for all agencies.

Agency	Organization	Title
ADMINISTRATIVE CONFERENCE OF THE UNITED STATES.	Administrative Conference of the United States.	Executive Director.
		General Counsel.
ADVISORY COUNCIL ON HISTORIC PRESERVATION.	Office of the Executive Director	Executive Director.
DEPARTMENT OF AGRICULTURE	Office of Communications	Deputy Director, Creative Development.
	Office of the Chief Information Officer	Deputy Chief Information Officer for Operations and Infrastructure.
		Associate Chief Information Officer, International Technology Services.
	Office of the Chief Financial Officer	Associate Chief Financial Officer for Financial Policy and Planning.
		Deputy Chief Financial Officer.
		Associate Chief Financial Officer, Financial Systems Planning and Management.
	National Finance Center	Director, Financial Services Division.
		Director, Information Technology Management Division.
		Deputy Director, National Finance Center.
	Office of the General Counsel	Assistant General Counsel, Natural Resources and Environment Division.
		Associate General Counsel, General Law and Research Division.
	Office of the Chief Economist	Chairperson.
		Director, Office of Risk Assessment and Cost-Benefit Analysis.
		Director Global Change Program Office.
		Director, Office of Energy Policy and New Uses.
	Office of Human Resources Management.	Provost, United States Department of Agriculture Virtual University.
		Executive Director, Executive Resources Management Division.
	Office of Advocacy and Outreach	Director, Office of Advocacy and Outreach.
	Office of Operations	Director.
		Deputy Director.
	Office of Procurement and Property Management.	Associate Director, Procurement and Property Management.
		Director, Procurement and Property Management.
	Rural Business Service	Deputy Administrator, Business Programs (2).
	Rural Housing Service	Director, Human Resources.
		Chief Financial Officer.
		Deputy Administrator, Centralized Servicing Center.
		Deputy Administrator, Multi-Family Housing.
		Deputy Administrator for Operations and Management.
		Director, Loans Receivable Center of Excellence.
	Agricultural Marketing Service	Associate Administrator.
		Deputy Administrator, Information Technology Services.
		Deputy Administrator, Livestock and Seed Programs.
		Deputy Administrator, Dairy Programs.
		Deputy Administrator, Fruit and Vegetable Programs.
		Deputy Administrator, Science and Technology Programs.
		Deputy Administrator for National Organic Programs.
		Deputy Administrator, Cotton and Tobacco Programs.
		Deputy Administrator, Transportation and Marketing Programs.
		Deputy Administrator, Poultry Programs.
		Deputy Administrator, Compliance and Analysis.
	Animal and Plant Health Inspection Service.	Chief Advisor (Government, Academia and Industry Partnership).
		Executive Director, Center for Plant Health Science and Technology.
		Associate Deputy Administrator, Wildlife Services.
		Deputy Administrator, Animal Care.

Agency	Organization	Title
		Deputy Administrator, Wildlife Services.
		Associate Deputy Administrator for Marketing and Regulatory Programs—Business Services.
		Deputy Administrator for Marketing and Regulatory Programs—Business Services.
		Chief Financial Officer.
		Assistant Deputy Administrator, Emergency and Domestic Programs.
		Associate Deputy Administrator for Animal Care.
		Human Resources Officer.
		Director, National Wildlife Research Center.
		Director, Investigative and Enforcement Services.
		Director, Information Technology Division.
		Director, Center for Veterinary Biologics.
		Associate Deputy Administrator, Emerging and International Programs.
		Deputy Administrator, Legislative and Public Affairs.
		Deputy Administrator for International Services.
		Deputy Administrator, Biotechnology Regulatory Programs.
		Associate Deputy Administrator, Veterinary Services.
		Executive Director, Western Region, Wildlife Services.
		Director, Eastern Region, Wildlife Services.
	Veterinary Services	Executive Director, Science, Technology and Analysis Service.
		Associate Deputy Administrator, National Animal Health Policy Programs.
		Director, Western Region, Veterinary Services.
		Executive Director, Surveillance Preparedness and Response Service, Veterinary Services.
	Plant Protection and Quarantine Service.	Executive Director, Eastern Region, Plant Protection and Quarantine.
		Executive Director, Policy Management.
		Executive Director, Western Region, Plant Protection and Quarantine.
	Office of the Under Secretary for Food Safety.	Deputy Under Secretary for Food Safety.
	Food Safety and Inspection Service	International Affairs Liaison Officer.
		Executive Associate for Regulatory Operations, Office of Field Operations.
		Chief Information Officer.
		Chief Financial Officer.
		Assistant Administrator, Office of Field Operations.
		Deputy Administrator.
		Deputy Assistant Administrator, Office of Data Integration and Food Program.
		Assistant Administrator, Office of Data Integration and Food Protection.
		Assistant Administrator, Office of Management.
		Assistant Administrator, Office of Public Affairs, Education and Outreach.
		Executive Associate for Public Health.
		Executive Associate for Regulatory Operations, Office of Field Operations.
		Deputy Assistant Administrator, Office of Management.
		United States Manager for Codex.
		Assistant Administrator, Office of Investigation, Enforcement and Auditing.
		Deputy Assistant Administrator, Office of Public Health Science.
		Deputy Assistant Administrator, Office of Field Operations.
		Assistant Administrator.
		Assistant Administrator, Office of International Affairs.
		Executive Associate for Laboratory Services, Office of Public Health Science.
		Executive Associate for Regulatory Operations, Office of Field Operations.
		Deputy Assistant Administrator, Office of International Affairs.
		Executive Associate for Regulatory Operations, Office of Field Operations.
		Deputy Assistant Administrator, Office of Policy and Program Development.
		Chief Operating Officer.

Agency	Organization	Title
		Assistant Administrator, Office of Policy and Program Development.
		Deputy Assistant Administrator, Office of Investigation, Enforcement and Audit.
		Assistant Administrator, Office of Catfish Inspection Programs.
	Food and Nutrition Service	Associate Administrator for Management and Finance.
		Financial Manager.
		Program Manager (Associate Administrator for Regional Operations and Support).
		Director, Office of Research, Nutrition and Analysis.
		Program Manager (Deputy Administrator for Management).
	Foreign Agricultural Service	Associate Administrator (Chief Operating Officer).
		Deputy Administrator, Office of Global Analysis.
	Farm Service Agency	Assistant Deputy Administrator Farm Programs.
		Director, Business and Program Integration.
		Director, Office of Budget and Finance.
		Director, Human Resources Division.
		Deputy Director, Office of Budget and Finance.
		Deputy Administrator for Farm Loan Programs.
	Risk Management Agency	Deputy Administrator for Insurance Services Division.
		Deputy Administrator for Research and Development.
	Office of the Under Secretary for Research, Education, and Economics.	Director Office of the United States Department of Agriculture Chief Scientist.
	Agricultural Research Service	Associate Administrator, Research Operations and Management.
		Chief Information Officer.
		Assistant Administrator for Technology Transfer.
		Director, Office of Pest Management Policy.
		Deputy Administrator for Administrative and Financial Management.
		Associate Deputy Administrator for Administrative and Financial Management.
		Chief Financial Officer.
	Office of National Programs	Associate Administrator, National Programs.
		Deputy Administrator, Crop Production and Protection.
		Deputy Administrator, Nutrition, Food Safety and Quality.
		Deputy Administrator, Animal Production and Protection.
		Deputy Administrator for Natural Resources and Sustainable Agriculture Systems.
	Northeast Area Office	Director, Beltsville Agricultural Research Center.
		Director, Northeast Area Office.
		Director, Eastern Regional Research Center.
		Associate Director, Northeast Area (2).
	Southeast Area Office	Director, South East Area.
		Director, Southern Regional Research Center.
		Associate Director, Southeast Area (2).
	Midwest Area Office	Director, National Center for Agriculture Utilization.
		Associate Director, Midwest Area(2).
		Director, Midwest Area.
	Mid-south Area Office	Director, Mid-South Area.
	Plains Area Office	Director, United States Meat Animal Research Center.
		Associate Director, Plains Area Office (2).
		Director, Plains Area.
	Pacific West Area Office	Director, Pacific West Area Office.
		Associate Director, Pacific West Area.
		Director, Western Human Nutrition Research Center.
		Associate Director, Pacific West Area Office.
		Director, Western Regional Research Center.
	National Institute of Food and Agriculture.	Deputy Director, Office of Information Technology.
		Deputy Director, Office of Grants and Financial Management.
		Deputy Director, Institute of Bioenergy, Climate, and Environment.
		Deputy Director, Institute of Food Safety and Nutrition.
	Economic Research Service	Director, Market and Trade Economics Division.
		Administrator, Economic Research Service.
		Associate Administrator, Economic Research Service.
		Director, Food Economics Division.
		Director, Resource and Rural Economics Division.
		Director, Information Services Division.
	National Agricultural Statistics Service	Director, National Operations Center.
		Administrator, National Agricultural Statistics Service.
		Associate Administrator.

Agency	Organization	Title
		Director, Western Field Operations.
		Director, Methodology Division.
		Director, Statistics Division.
		Director, Census and Survey Division.
		Director, Information Technology Division.
		Director Eastern Field Operations.
	Natural Resources Conservation Service.	Special Assistant to Chief.
		Human Resources Officer.
		Deputy Chief for Programs.
		Director, Financial Assistance Programs Division.
		Regional Conservationist (Northeast).
		Director, Resource Economics, Analysis and Policy Division.
		Director, Resource Inventory Division.
		Deputy Chief for Strategic Planning and Accountability.
		Director, Easement Programs Division.
		Associate Chief for Operations/Chief Operating Officer.
		Director, Soil Science Division.
		Director, Conservation Engineering Division.
		Chief Financial Officer.
		Director, Ecological Sciences Division.
	Forest Service	Associate Deputy Chief, Research and Development.
		Director, Law Enforcement and Investigations.
		Director, Acquisition Management.
		Associate Deputy Chief for Business Operations.
		Director, Fire and Aviation Staff.
		Chief Financial Officer.
		Deputy Chief, Business Operations.
	Office of Research	Director, Resource Use Sciences.
		Director, Sustainable Forest Management.
		Director, Science Policy, Planning, and Information Staff.
		Director, Environmental Sciences.
	Office of National Forest System	Director, Ecosystem Management Coordination.
		Director, Lands Management Staff.
		Director, Engineering.
		Director, Forest Management Staff.
		Director, Rangeland Management.
		Director, Minerals and Geology Management Staff.
		Director, Water, Fish, Wasteland, Air and Rare Plants.
	Office of State and Private Forestry	Senior Advisor to the Deputy Chief, State and Private Forestry.
		Director, Cooperative Forestry.
		Director, Forest Health Protection.
	Field Units	Director, Forest Products Laboratory (Madison).
		Director, Southern Research Station (Asheville).
		Director, Rocky Mountain Forest and Range Experiment Station (Fort Collins).
		Director, Pacific Southwest Forest and Range Experiment Station (Vallejo).
		Director, Pacific Northwest Research Station.
		Station Director, North Eastern Forest Experiment Station (Newtown Square).
		Northeast Area Director, State and Private Forestry.
	Office of International Forest System	Director, International Institute of Tropical Forest (Rio Piedras).
DEPARTMENT OF AGRICULTURE OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Counsel to the Inspector General.
		Deputy Inspector General.
	Office of Assistant Inspector General for Management.	Assistant Inspector General for Management.
	Office of Assistant Inspector General for Audit.	Deputy Assistant Inspector General for Audit.
		Deputy Assistant Inspector General for Audit.
		Assistant Inspector General for Audit.
		Deputy Assistant Inspector General for Audit.
	Office of Assistant Inspector General for Investigations.	Assistant Inspector General for Investigations.
		Deputy Assistant Inspector General for Investigations.
AMERICAN BATTLE MONUMENTS COMMISSION.	Office of Executive Director	Deputy Secretary.
	Office of European Region	Director, European Region.
ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD (UNITED STATES ACCESS BOARD).	Architectural and Transportation Barriers Compliance Board (United States Access Board).	Director, Office of Technical and Information Services.
		Executive Director.
BROADCASTING BOARD OF GOVERNORS.	International Broadcasting Bureau	Deputy for Engineering Resource Control.
		Deputy for Network Operations.
		Associate Director for Management.

Agency	Organization	Title
		Chief Executive Officer.
CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD.	Office of the Chief Operating Officer	Chief Operating Officer.
DEPARTMENT OF COMMERCE	Office of the Deputy Secretary	Interim Executive Director.
	Office of the Chief Information Officer	Deputy Chief Information Officer for Management and Business Operations.
		Deputy Chief Information Officer, and Chief Technology Officer.
		Director of Cyber Security, and Chief Information Security Officer.
	Office of the General Counsel	Associate General Counsel.
		Chief, Ethics Division.
		Assistant General Counsel for Finance and Litigation.
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Director, Office of Security.
		Director for Facilities and Environmental Quality.
		Director, Financial Reporting and Internal Controls.
		Director for Financial Management and Deputy Chief Financial Officer.
		Director, Office of Acquisition Management.
		Deputy Director, Office of Security.
		Deputy Director for Facilities and Environmental Quality.
		Deputy for Procurement Management, Policy and Performance Excellence.
		Director, Human Resources Operations Center.
		Executive Director, Business, United States of America.
		Director of the Office of Budget.
		Deputy for Acquisition Program Management.
		Deputy Assistant Secretary for Resource Management.
		Director, Office of the Secretary for Financial Management.
		Director for Human Resources Management and Chief Human Capital Officer.
		Deputy Director for Human Resources Management and Deputy Chief Human Capital Officer.
		Deputy Director, Office of Financial Management Systems.
	Office of the Deputy Assistant Secretary for Administration.	Director, Human Capital Strategy and Diversity.
	Office of the Inspector General	Deputy Assistant Inspector General for Economic and Statistical Program Assessment.
		Assistant Inspector General for Administration.
		Assistant Inspector General for Systems Evaluation.
		Deputy Assistant Inspector General for Auditing.
	Office of Counsel to the Inspector General.	Counsel to the Inspector General.
	Office of Inspections and Program Evaluation.	Assistant Inspector General for Inspections and Program Evaluation.
	Office of Investigations	Assistant Inspector General for Investigations.
	Economics and Statistics Administration	Director for Policy and Planning.
		Chief Financial Officer and Director for Administration.
	Bureau of the Census	Senior Advisor for Service Delivery.
	Office of the Director	Chief Decennial Systems and Contracts Management Office.
		Associate Director for Performance Improvement.
		Senior Advisor for Business Transformation.
		Senior Advisor for Project Management.
	Officer of the Chief Information Officer	Chief Technology Officer.
		Assistant Director for Information Technology and Deputy Chief Information Officer.
		Chief, Application Services Division.
		Associate Director for Information Technology and Chief Information Officer.
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Chief, Finance Division.
		Associate Director for Administration and Chief Financial Officer.
		Chief, Budget Division.
		Chief, Acquisition Division.
		Chief, Human Resources Division.
	Office of Associate Director for Field Operations.	Chief, Office of Survey and Census Analytics.
		Associate Director for Field Operations.
		Chief, National Processing Center.
		Chief, Field Division.
	Office of Associate Director for Economic Programs.	Chief, International Trade Management Division.
		Chief, Economic Indicators Division.
		Chief, Economic Reimbursable Surveys Division.
		Chief, Economy-Wide Statistics Division.

Agency	Organization	Title
		Assistant Director for Economic Programs.
		Associate Director for Economic Programs.
		Chief, Economic Applications Division.
		Chief, Economic Management Division.
	Office of Associate Director for Decennial Census.	Chief, Decennial Information Technology Division.
		Chief, American Community Survey Office.
		Assistant Director for Decennial Census Programs.
		Chief, Geography Division.
		Chief, Decennial Management Division.
		Associate Director for Decennial Census.
		Chief, Decennial Statistical Studies Division.
	Office of Associate Director for Demographic Programs.	Chief, Social, Economic, and Housing Statistics Division.
		Chief, Demographic Statistical Methods Division.
		Assistant Director for Demographic Programs.
		Associate Director for Demographic Programs.
		Chief, Population Division.
		Chief, Demographic Surveys Division.
	Office of Associate Director for Research and Methodology.	Chief, Center for Adaptive Design.
		Chief, Center for Survey Measurement.
		Assistant Director for Research and Methodology.
		Associate Director for Research and Methodology.
		Chief, Center for Economic Studies and Chief Economist.
		Chief, Statistical Research Division.
		Chief, Center for Administrative Records Research and Applications.
	Bureau of Economic Analysis	Associate Director for Industry Accounts.
		Chief, Information Officer.
		Chief, Balance of Payments Division.
		Chief, Direct Investment Division.
		Chief Administrative Officer.
	Office of the Director	Director, Bureau of Economic Analysis.
		Deputy Director, Bureau of Economic Analysis.
		Chief Statistician.
		Chief Economist.
	Office of Associate Director for Regional Economics.	Associate Director for Regional Economics.
	Office of Associate Director for International Economics.	Associate Director for International Economics.
	Office of Associate Director for National Income, Expenditure and Wealth Accounts.	Chief, National Income and Wealth Division.
		Associate Director for National Income, Expenditure and Wealth Accounts.
	Bureau of Industry and Security	Chief Financial Officer and Director of Administration.
	Office of the Assistant Secretary for Export Enforcement.	Deputy Director, Office of Export Enforcement.
		Deputy Assistant Secretary for Export Enforcement.
		Director, Office of Export Enforcement.
		Director, Office of Enforcement Analysis.
	Office of the Deputy Assistant Secretary.	Chief Financial Officer and Chief Administrative Officer.
	Office of the Deputy Under Secretary	Chief Financial and Administrative Officer.
		Deputy Chief Financial and Administrative Officer.
	Office of the Deputy Assistant Secretary for Trade, Policy and Analysis.	Director, Office of Standards and Investment Policy.
	Office of the Deputy Assistant Secretary for Antidumping Duty/Countervailing Duty Operations.	Senior Director, Antidumping Duty/Countervailing Duty Enforcement Office VII.
		Associate Deputy Assistant Secretary for Antidumping Duty/Countervailing Duty Operations.
	Office of the Assistant Secretary for Global Markets.	Director, Trade Compliance Center.
	Office of the Deputy Assistant Secretary for China.	Executive Director for China.
	Office of the Director	Associate Director for Management.
	National Oceanic and Atmospheric Administration.	Deputy Assistant Administrator for Programs and Administration.
		Chief, Resource and Operations Management.
	Office of Deputy Under Secretary	Director, Program Evaluation, Planning and Risk Management Office.
	National Oceanic and Atmospheric Administration Coastal Ocean Program Office.	Director, Budget Office.
	Office of Sustainable Development and Intergovernmental Affairs.	Director, Office of Education.
	Office of Finance and Administration	Chief Financial Officer.
		Deputy Chief Administrative Officer.
		Director, Finance Office/Comptroller.

Agency	Organization	Title
		Deputy Director, Acquisition and Grants Office.
		Chief Administrative Officer.
		Deputy Director for Workforce Management.
		Director, Acquisition and Grants Office.
		Director for Workforce Management.
	Office of High Performance Computing and Communications.	Chief Information Officer and Director for High Performance Computing and Communications.
		Deputy Chief Information Officer.
	National Ocean Service	Director, Office of National Geodetic Survey.
		Director, Center for Operational Oceanographic Products and Services.
		Director, Integrated Ocean Observing System.
		Associate Assistant Administrator for Management and Chief Financial Officer/Chief Administrative Officer.
	National Oceanic and Atmospheric Administration Coastal Services Center.	Director, National Centers for Coastal Ocean Science.
	Hazardous Materials Response and Assessment Division.	Director, Office of Response and Restoration.
	Office of the Assistant Administrator for Weather Services.	Deputy Director, National Water Center.
		Director, Strategic Planning and Policy Office.
		Director, National Water Center.
		Director, Office of Dissemination.
		Office of Organizational Excellence.
		Director, Office of Central Processing.
		Director, Analyze, Forecast and Support Office.
		Director, Office of Facilities.
		Director, Office of Science and Technology Integration.
		Director, Office of Observations.
		Chief Operating Officer.
		Chief Engineer.
		Director, Office of Planning and Programming for Service Delivery.
		Chief Financial Officer/Chief Administrator Officer.
		Director, Space Weather Prediction Center.
	Office of the Chief Information Officer	Assistant Chief Information Officer for Weather Service.
	Office of the Federal Coordinator for Meteorology.	Director, Office of the Federal Coordinator for Meteorology.
	Office of Hydrologic Development	Director, Office of Hydrologic Development.
	Hydrology Laboratory	Chief, Hydrology Laboratory.
	Office of Science and Technology	Director, Office of Science and Technology.
	Meteorological Development Laboratory	Director, Meteorological Development Laboratory.
	Systems Engineering Center	Director, Systems Engineering Center.
	Office of Operational Systems	Director, Office of Operational Systems.
	Telecommunications Operations Center	Chief, Telecommunications Operations Center.
	Maintenance, Logistics, and Acquisition Division.	Chief, Operations Division.
	Radar Operations Center	Director, Radar Operations Center.
	National Data Buoy Center	Director, National Data Buoy Center.
	Office of Climate, Water, and Weather Services.	Chief, Meteorological Services Division.
		Director, Office of Climate, Water, and Weather Services.
	Eastern Region	Director Eastern Region National Weather Service.
	Southern Region	Director, Southern Region.
	Central Region	Director, Central Region.
	Western Region	Director, Western Region.
	Alaska Region	Director, Alaska Region, Anchorage.
	National Centers for Environmental Prediction.	Director, Environmental Modeling Center.
		Director, Ocean Prediction Center.
		Director, National Severe Storms Laboratory.
		Director, Weather Prediction Center.
		Director, National Centers for Environmental Prediction.
		Director, Aviation Weather Center.
	National Centers for Environmental Prediction Central Operations.	Director, Central Operations.
	Climate Prediction Center	Director, Climate Prediction Center.
	Storm Prediction Center	Director, Storm Prediction Center.
	Tropical Prediction Center	Director, National Hurricane Center.
	Office of Assistant Administrator for Fisheries.	Director, Office of Management and Budget.
	National Marine Fisheries Service	Director, Office of Habitat Conservation.
		Deputy Assistant Administrator for Regulatory Programs.
		Director, Office of Sustainable Fisheries.
		Science and Research Director, Southwest Region.
		Science and Research Director, Pacific Island Region.
		Director, International Affairs and Seafood Inspection.

Agency	Organization	Title
	Office of Fisheries Conservation and Management.	Director, Scientific Programs and Chief Science Advisor.
		Director, Office of Enforcement.
	Office of Protected Resources	Director, Office of Science and Technology.
	Northeast Fisheries Science Center	Science and Research Director, Northeast Region.
	Southeast Fisheries Science Center	Science and Research Director, Southeast Region.
	Northwest Fisheries Science Center	Science and Research Director, Northwest Region.
	Alaska Fisheries Science Center	Science and Research Director.
	Office of Assistant Administrator Satellite, Data Information Service.	Director, Office of Projects, Partnerships and Analysis.
		Director, Satellite Ground Services.
		Deputy Director, National Center for Environmental Information.
		Director, National Center for Environmental Information.
		Deputy Director, Office of Satellite and Product Operations.
		Director, Joint Polar Satellite Systems.
		Deputy Assistant Administrator for Systems.
		System Program Director for Geostationary Operational Environmental Satellite-R Program.
		Chief Financial Officer/Chief Administrative Officer.
		Assistant Chief Information Officer for the National Environmental Satellite, Data, and Information Service.
	National Climatic Data Center	Director, National Climatic Data Center.
	National Oceanographic Data Center	Director, National Oceanographic Data Center.
	Office of Systems Development	Director, Office of Systems Development.
		Director, Systems Engineering Program.
	Office of Assistant Administrator, Ocean and Atmospheric Research.	Chief Financial Officer/Chief Administrative Officer.
		Director, Climate Program Office.
		Director, Earth System Research Laboratory and Principal Science Advisor.
		Deputy Assistant Administrator for Laboratories, Cooperative Institutes and Director, Air Resources Laboratory.
		Director, Office of Ocean Exploration and Research.
	National Sea Grant College Program	Director, National Sea Grant College Program.
	Aeronomy Laboratory	Director, Chemical Science Division.
	Atlantic Ocean and Meteorology Laboratory.	Director, Atlantic Oceanographic and Meteorological.
	Geophysical Fluid Dynamics Laboratory	Director, Office of Geophysical Fluid Dynamics Laboratory.
	Great Lake Environmental Research Laboratory.	Director, Office of Great Lakes Environmental Research Laboratory.
	Pacific Marine Environmental Research Laboratory.	Director, Office of Pacific Marine Environmental Laboratory.
	Environmental Technology Laboratory	Director, Physical Science Division.
	Forecast Systems Laboratory	Director, Global Systems Division.
	Climate Monitoring and Diagnostics Laboratory.	Director, Global Monitoring Division.
	Office of the Assistant Secretary for Communications and Information.	Chief Information Officer and Deputy Director of Administration.
		Chief Digital Officer.
		Chief Financial Officer and Director of Administration.
	Office of First Responder Network Authority.	Chief Information Officer, First Responder Network Authority.
		Chief Technology Officer, First Responder Network Authority.
		Chief Administrative Officer, First Responder Network Authority.
		Chief Financial Officer, First Responder Network Authority.
	Office of International Affairs	Associate Administrator, Office of International Affairs.
	Institute for Telecommunication Sciences.	Deputy Director for Systems and Networks.
	Office of the Under Secretary	Vice Chief Administrative Patent Judge.
		Regional Director, Denver.
		Chief, Trademark Trial and Appeal Board.
		Patent Trial and Appeal Board Executive.
		Vice Chief Administrative Patent Judge.
		Regional Director, Dallas.
		Regional Director, Detroit.
		Deputy Chief Administrative Patent Judge.
		Chief Administrative Patent Judge.
		Director, Office of Equal Employment Opportunity and Diversity.
		Deputy Chief Administrative Trademark Judge.
		Regional Director, San Jose.
	Office of Policy and International Affairs	Deputy Chief Policy Officer for Operations.
		Deputy Chief Policy Officer.

Agency	Organization	Title
		Director, Governmental Affairs.
	Office of the General Counsel	Deputy General Counsel for Intellectual Property Law and Solicitor.
		Deputy General Counsel for General Law.
		Deputy General Counsel for Enrollment and Discipline.
		Deputy Solicitor and Assistant General Counsel for Intellectual Property Law.
	Patent Trial and Appeal Board	Patent Trial and Appeal Board Executive.
	Office of the Chief Administrative Officer.	Deputy Chief Administrative Officer.
		Director, Human Capital Management.
		Director, Office of Administrative Services.
		Director, Office of Administrative Services.
	Office of the Chief Financial Officer	Director, Office of Finance.
		Director, Office of Procurement.
		Director, Office of Budget and Planning.
		Chief Financial Officer.
		Deputy Chief Financial Officer.
		Director, Office of Budget and Planning.
	Office of the Chief Information Officer	Director, Office of Program Administration Organization.
		Director, Office of Information Management Services.
		Chief Technology Officer.
		Director, Office of Infrastructure Engineering and Operations.
		Director, Application Engineering and Development.
		Deputy Chief Information Officer.
		Director of Organizational Policy and Governance.
		Director, Office of Policy and Governance.
	Office of the Commissioner for Trademarks.	Deputy Commissioner for Trademark Examination Policy.
		Group Director, Trademark Law Offices.
		Deputy Commissioner for Trademark Operations.
		Deputy Commissioner of Trademark Administration.
		Deputy Commissioner for Trademark Operations.
		Group Director, Trademark Law Offices (2).
	Office of the Commissioner for Patents	Director, Office of Patent Quality Assurance.
		Regional Director.
		Program Director, International Patent Cooperation.
		Deputy Commissioner for Patent Operations.
		Director, Office of Patent Training.
		Associate Commissioner for Patent Resources and Planning.
		Deputy Director, Patent Training Academy.
		Associate Commissioner for Patent Examination Policy.
		Deputy Associate Commissioner for Patent Information Management.
		Director, Office of Patent Legal Administration.
		Director, Office of the Central Re-examination Unit.
		Associate Commissioner for Patent Information Management.
		Deputy Commissioner for Patent Administration.
		Assistant Deputy Commissioner for Patents (5).
		Deputy Commissioner for Patent Quality.
		Associate Commissioner for Innovation and Development.
		Deputy Commissioner for International Patent Cooperation.
	Office of Group Directors	Group Director—2800 (4).
		Group Director—2400 (2).
		Group Director—3700 (4).
		Group Director—2600 (4).
		Group Director—2100 (3).
		Group Director (2).
		Group Director—1600 (3).
		Group Director—3600 (4).
		Group Director—1700 (3).
		Regional Group Director.
		Group Director—2900.
	National Institute of Standards and Technology.	Director, Standards Coordination Office.
		Associate Director for Laboratory Programs.
		Associate Director for Management Resources.
		Associate Director for Innovation and Industry Services.
		Boulder Laboratories Site Manager.
		Chief Safety Officer.
		Chief Cybersecurity Advisor.

Agency	Organization	Title
		Deputy Director, Center for Nanoscale Science and Technology.
		Director, Center for Nanoscale Science and Technology.
		Deputy Director, National Institute of Standards and Technology Center for Neutron Research.
		Chief of Staff for National Institute for Standards and Technology.
		Director, National Institute of Standards and Technology Center for Neutron Research.
		Chief Facilities Management Officer.
		Chief Scientist.
		Deputy Director, Special Programs Office.
		Director, Special Programs Office.
		Director, Smart Grid and Cyber-Physical Systems Program Office.
	Office of the Director, National Institute of Standards and Technology.	Director, Advanced Manufacturing Program Office.
		Senior Advisor for Laboratory Programs.
		Chief Manufacturing Officer.
		Director, Communications Technology Laboratory.
		Senior Advisor to the Director, Physical Measurement Laboratory.
		Chief Financial Officer for National Institute of Standards and Technology.
		Chief Information Officer for National Institute of Standards and Technology.
	Baldrige Performance Excellence Program.	Director, Baldrige Performance Excellence Program.
	Manufacturing Extension Partnership Program.	Deputy Director, Manufacturing Extension Partnership Program.
		Director, Manufacturing Extension Partnership Programs.
	Electronics and Electrical Engineering Laboratory.	Deputy Director, Physical Measurement Laboratory.
	Manufacturing Engineering Laboratory	Deputy Director for Manufacturing.
	Chemical Science and Technology Laboratory Office.	Director, Material Measurement Laboratory.
	Physics Laboratory Office	Director, Physical Measurement Laboratory.
	Building and Fire Research Laboratory	Director, Engineering Laboratory.
	National Technical Information Service	Deputy Director, National Technical Information Service.
	Information Technology Laboratory	Director, Information Technology Laboratory.
		Deputy Director, Information Technology Laboratory.
	Office of the Chief Financial Officer	Director for Acquisition and Grants Management.
DEPARTMENT OF COMMERCE OFFICE OF THE INSPECTOR GENERAL.	Office of Inspector General	Deputy Inspector General.
	Office of Audit and Evaluation	Assistant Inspector General for Audits.
		Assistant Inspector General for Acquisition and Special Program Audits.
		Principal Assistant Inspector General for Audit and Evaluation.
		Assistant Inspector General for Intellectual Property and Special Program Audits.
	Office of Economic and Statistical Program Assessment.	Assistant Inspector General for Economic and Statistical Program Assessment.
	Office of Systems Acquisitions and Information Technology Security.	Assistant Inspector General for Systems Acquisitions and Information Technology Security.
	Office of Program Assessment	Assistant Inspector General for Administration.
	Office of Investigations	Assistant Inspector General for Investigations.
	Office of Counsel	Counsel to the Inspector General.
CONSUMER PRODUCT SAFETY COMMISSION.	Office of Executive Director	Assistant Executive Director for Compliance and Administrative Litigation.
		Director, Office of International Programs and Intergovernmental Affairs.
		Assistant Executive Director for Information and Tech Services.
	Office of Hazard Identification and Reduction.	Associate Executive Director for Epidemiology.
		Associate Executive Director for Engineering Sciences.
		Associate Executive Director for Economic Analysis.
		Assistant Executive Director for Hazard Identification and Reduction.
		Deputy Assistant Executive Director for Hazard Identification and Reduction.
	Office of Import Surveillance	Director, Office of Import Surveillance.
COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA.	Court Services and Offender Supervision Agency for the District of Columbia.	Associate Director for Research and Evaluation.
		Deputy Director.
		Associate Director for Human Resources.
		Associate Director for Administration.

Agency	Organization	Title
		Chief Financial Officer.
		Management and Program Analysis Officer and Chief of Staff.
		Associate Director, Legislative, Intergovernmental and Public Affairs.
		Associate Director for Community Justice Programs.
		Associate Director for Community Supervision.
		Chief Information Officer.
	Pretrial Services Agency	Associate Director for Operations.
		Director.
		Deputy Director.
		Associate Director for Management and Administration.
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Under Secretary of Defense (Policy).	Special Assistant (Career Broadening) (2).
	Office of Principal Deputy Under Secretary for Policy.	Foreign Relations and Defense Policy Manager (Senior Advisor to the Principal Deputy Under Secretary of Defense for Policy).
	Office of the Assistant Secretary of Defense (Asian and Pacific Security Affairs).	Deputy Assistant Secretary of Defense (East Asia).
	Office of Director for Operational Test and Evaluation.	Deputy Director for Live Fire Test and Evaluation.
	Office of the Deputy Chief Management Officer.	Director, Oversight and Compliance.
		Director of Administration.
		Department of Defense Senior Intelligence Oversight Official and Deputy Director Oversight and Compliance.
		Director Management and Requirements Analysis Division.
		Director Policy and Decision Support Division.
		Director, Management Policy and Analysis Directorate.
		Director, Planning, Performance and Assessment Directorate.
		Director, Enterprise Performance Division.
	Office of the Under Secretary of Defense (Personnel and Readiness).	Chief of Staff.
	Office Assistant Secretary of Defense (Health Affairs).	General Counsel.
		Regional Director, Tricare Regional Office—South.
		Military Health System Chief Information Officer.
		Deputy Chief, Tricare Acquisitions Directorate.
	Office of the Under Secretary of Defense (Comptroller).	Deputy Chief Financial Officer.
	Washington Headquarters Services	Deputy Director, Human Resources Directorate.
		Deputy Director, Defense Facilities Directorate.
		Director, Facilities Services Directorate.
		Principal Assistant Responsible for Contracting.
		Director, Policy, Plans and Requirements.
		Director, Acquisition Directorate.
		Director, Department of Defense Consolidated Adjudications Facility.
		Director, Human Resources Directorate.
	Pentagon Force Protection Agency	Director, Pentagon Force Protection Agency.
		Assistant Director, Law Enforcement.
		Principal Deputy Director, Pentagon Force Protection Agency.
	Office of the General Counsel	Director, Office of Litigation.
		Director, Defense Office of Hearings and Appeals.
	Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).	Deputy Director, Office of the Secretary of Defense Studies and Federally Funded Research and Development Center Management.
		Director for Administration.
		Deputy Director, Treaty Compliance and Homeland Defense.
		Director, Defense Procurement and Acquisition Policy.
		Deputy Director, Enterprise Information.
		Principal Deputy Director, Administration.
		Deputy Director for Program Development and Implementation.
		Deputy Director, Acquisition Technology.
		Principal Deputy, Acquisition Resources and Analysis.
		Director, Acquisition Resources and Analysis.
		Deputy Director, Resource Analysis.
	Assistant Secretary of Defense (Acquisition).	Principal Deputy Assistant Secretary of Defense (Acquisition).
		Deputy Director, Naval Warfare.
		Deputy Director, Defense Acquisition Regulations System.

Agency	Organization	Title
		Technical Director, Force Development.
		Deputy Director, Program Acquisition and Strategic Sourcing.
		Deputy Director, Assessments and Support.
		Deputy Director, Land Warfare and Munitions.
		Assistant Deputy Under Secretary of Defense (Acquisition Process and Policies).
		Special Assistant Concepts and Plans.
		Deputy Director, Contract Policy and International Contracting.
	Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs.	Deputy Assistant Secretary of Defense (Nuclear Matters).
	Office of the Director of Defense Research and Engineering.	Director, Human Performance, Training and Bio systems.
		Deputy Director, Information Systems and Cyber Security.
		Director, Space and Sensor Technology.
		Director for Weapons Systems.
		Principal Deputy Assistant Secretary of Defense (Research and Engineering)/Director, Plans and Programs.
	Defense Advanced Research Projects Agency.	Deputy Director, Strategic Technology Office.
		Director, Support Services Office.
		Director, Contracts Management Office.
		Director, Tactical Technology Office.
		Deputy Director, Defense Advanced Research Projects Agency.
		Deputy Director, Special Programs.
		Special Assistant for Procurement Policy Strategy.
		Director, Strategic Resources.
	Office of the Joint Chiefs of Staff	Vice Director, C4 Cyber (2).
		Vice Director, Joint Force Development.
		Assistant Deputy Director for Command and Control.
		Vice Deputy Director Joint and Coalition Warfighting.
		Executive Director, Force Generation.
		Vice Assistant Deputy Director, Joint Development.
		Assistant Deputy Director, Synchronization and Integration.
	Missile Defense Agency	Director for Acquisition.
		Deputy Program Manager for Assessment and Integration, Ballistic Missile Defense System.
		Deputy Program Director, Beam Control.
		Program Director, Ground-Based Midcourse Defense.
		Program Director for Battle Management, Command and Control.
		Director for Operations.
		Deputy for Engineering.
		Director for Advanced Technology.
		Chief Engineer, Ground-Based Midcourse Defense.
		Program Director, Targets and Countermeasures.
		Director for Systems Engineering and Integration.
		Director, Contracting.
		Deputy Director, Joint National Integration Center.
	Defense Contract Audit Agency	Assistant Director, Human Capital and Resource Management.
		Deputy Regional Director Mid-Atlantic Region.
		Deputy Regional Director, Western Region.
		Deputy Regional Director, Central Region.
		Deputy Regional Director, Northeastern Region.
		Deputy Regional Director, Eastern Region.
		Director, Defense Contract Audit Agency.
		Director, Field Detachment.
		Regional Director, Mid-Atlantic.
		Regional Director, Western.
		Regional Director, Central.
		Regional Director, Northeastern.
		Regional Director, Eastern.
		Assistant Director, Policy and Plans.
		Assistant Director, Operations.
		Deputy Director, Defense Contract Audit Agency.
	Regional Managers	Assistant Director, Integrity and Quality Assurance.
	Defense Logistics Agency	Executive Director, Support, Policy and Strategic Programs.
		Chief Financial Officer/Director, Defense Logistics Agency.
		Deputy Director, Information Operations/Chief Technical Officer.
		Acquisition Executive, Defense Logistics Agency Acquisition.

Agency	Organization	Title
		Executive Director, Operations and Sustainment.
		Executive Director, Joint Contingency Acquisition Support Office.
		Chief of Staff.
		Program Executive Officer, Defense Logistics Agency Information Operations.
		Vice Director, Defense Logistics Agency.
		Deputy Director, Defense Logistics Agency Acquisition.
		Director, Defense Logistics Agency Acquisition (J–7).
		Deputy Commander, Defense Logistics Agency Energy.
		Executive Director, Contracting and Acquisition Management.
		Executive Director, Troop Support Contracting and Acquisition Management.
		Director, Defense Logistics Agency Disposition Services.
		General Counsel.
		Director, Defense Logistics Agency Human Resources.
		Director, Defense Logistics Agency Information Operation.
		Principal Deputy Comptroller.
		Deputy Commander, Defense Logistics Agency Distribution.
		Deputy General Counsel, Defense Logistics Agency.
		Deputy Commander, Defense Logistics Agency Troop Support.
		Deputy Commander, Defense Logistics Agency Aviation.
		Deputy Commander, Defense Logistics Agency Land and Maritime.
	Defense Human Resources Activity	Director, Human Resources Operational Programs and Advisory Services.
		Deputy Director, Defense Manpower Data Center.
		Director, Defense Manpower Data Center.
		Chief Actuary, Defense Human Resources Activity.
	Defense Contract Management Agency	Executive Director, Financial and Business Operations and Comptroller.
		Deputy Chief Operations Officer.
		Executive Director, Contracts.
		Executive Director, Portfolio Management and Integration.
		Executive Director, Quality Assurance.
		General Counsel.
		Deputy Director, Defense Contract Management Agency.
		Chief Operations Officer.
		Deputy Executive Director, Portfolio Management and Integration.
	Defense Information Systems Agency ..	Deputy Chief Financial Executive/Comptroller.
		Principal Director for Computing Services.
		Director for Strategic Planning and Information.
		Inspector General.
		Congressional Liaison Officer.
		Chief Financial Executive/Comptroller.
		Director, Enterprise Information Services.
		Vice Principal Director, Operations.
		Director, Enterprise Engineering.
		Procurement Services Executive and Head of Contracting Activity.
		Base Realignment and Closure Transition Executive.
		Component Acquisition Executive.
		Principal Director, Operations Director.
		Director for Network Services.
		Vice Director for Network Services.
		Chief Technology Officer.
		Program Executive Officer, Communication.
		Chief, Corporate Planning and Mission Integration.
		Director, Department of Defense Information Network Readiness and Security Inspections.
		Senior Executive.
		Workforce Management Executive.
		Cyber Security, Risk Management and Authorizing Official Executive.
		Deputy Chief Technology Officer for Enterprise Services.
		Test and Evaluation Executive.
		Chief Information Assurance Executive and Program Executive Officer for Mission Assurance and Network Operations.
		Deputy Chief Technology Officer for Mission Assurance.

Agency	Organization	Title
		Vice Procurement Services Executive/Deputy Chief, Defense Information Technology Contracting Organization.
	Defense Threat Reduction Agency	General Counsel.
		Director, Acquisition, Finance and Logistics Directorate.
		Chief Scientist.
		Director, Counter Weapons of Mass Destruction Technologies Department.
		Director, Operations, Readiness and Exercises Directorate.
		Director, Intelligence, Plans and Resource Integration Directorate.
		Director, Basic and Applied Sciences Department.
		Director, Research and Development Directorate.
		Director, Nuclear Technologies Department.
		Director, Cooperative Threat Reduction Department.
		Executive Director.
		Director, On-Site Inspection Department.
	Defense Commissary Agency	Director.
DEPARTMENT OF THE AIR FORCE	Office of Logistics and Engineering	Director, Engineering and Technical Management.
		Deputy Director of Operations.
		Director, Logistics, Engineering and Force Support.
		Director of Logistics and Logistics Services.
		Executive Director, Air Force Installation and Mission Support Center.
		Chief, Science and Technology.
		Deputy Director of Policy, Programs and Strategy, International Affairs.
		Deputy Director, Air, Space and Information Operations.
		Director, Air Force Civil Engineer Center.
		Director, Headquarters Air Force Information Management.
		Executive Director.
		Executive Director, Air National Guard.
		Director, Diversity and Inclusion.
		Deputy Director, Strategy, Concepts and Assessments.
		Director, Diversity and Inclusion.
		Chief Information Officer and Deputy Director, Plans and Integration.
		Deputy Assistant Secretary (Logistics).
		Associate Deputy Assistant Secretary for Programs.
		Director of Policy, Programs and Strategy, International Affairs.
		Deputy Director of Operations.
		Director, 448 Combat Sustainment Wing.
		Deputy Director of Logistics.
		Director, Civilian Force Management.
		Deputy Director, Security Forces.
		Director, Cyber Capabilities and Compliance.
		Deputy Director, Requirements.
		Director, Space Security and Defense Program.
		Deputy Director, Security, Special Program Oversight, and Information Protection.
		Deputy Director, Strategic Planning.
		Director of Contracting.
		Executive Director, Africa.
		Deputy Director Force Development and Air Force Senior Language Authority.
		Director, Engineering and Technical Management.
		Director, Installations, Logistics and Mission Support.
		Director of Communications and Information.
		Director, Installation Support.
		Deputy Director, Strategic Plans, Programs, Requirements and Analyses.
		Director, Financial Management and Comptroller.
	Office of the Secretary	Deputy Director, Legislative Liaison.
		Deputy Director, Warfighter Systems Integration and Deployment.
		Director, Air Force Rapid Capabilities Office.
		Deputy Director, Air Force Review Boards Agency.
		Deputy Director, Air Force Rapid Capabilities Office.
	Office of the Under Secretary	Associate Deputy Under Secretary of the Air Force (Space) and Deputy Director Principal, Department of Defense Space Advisor Staff.
		Deputy Under Secretary of the Air Force (Space Programs).

Agency	Organization	Title
	Deputy Under Secretary (International Affairs).	Deputy Under Secretary (International Affairs).
		Director, Strategy, Operations, and Resources.
		Director of Policy, International Affairs.
	Office of Administrative Assistant to the Secretary.	Deputy Administrator Assistant.
		Director, Headquarters Air Force Information Management.
		Executive Director, Office of Special Investigations.
		Director Security, Special Program Oversight and Information Protection.
		Administrative Assistant.
	Office of Small and Disadvantaged Business Utilization.	Director, Office of Small and Disadvantaged Business Utilization.
	Office of Public Affairs	Deputy Director, Public Affairs.
	Office of Auditor General	Auditor General of the Air Force.
		Assistant Auditor General, Field Offices Directorate.
	Air Force Audit Agency (Field Operating Agency).	Assistant Auditor General, Operations and Support Audits.
		Assistant Auditor General, Acquisition, Logistics and Financial Audits.
	Air Force Office of Special Investigations (Field Operating Agency).	Deputy Director Security, Special Program Oversight and Information Protection.
		Executive Director, Defense Cyber Crime Center.
	Office of the General Counsel	Deputy General Counsel (Acquisition).
		Deputy General Counsel (International Affairs).
		Deputy General Counsel (Installations, Energy and Environment).
		Director, Global Combat Support.
		Principal Deputy General Counsel.
	Office of Assistant Secretary Air Force for Financial Management and Comptroller.	Chief Information Officer.
	Office of Deputy Assistant Secretary Budget.	Director, Budget Management and Execution.
		Associate Deputy Assistant Secretary (Budget).
		Director, Budget Investment.
	Office of Deputy Assistant Secretary Cost and Economics.	Associate Deputy Assistant Secretary (Cost and Economics).
		Deputy Assistant Secretary (Cost and Economics).
	Office of Deputy Assistant Secretary Financial Operations.	Deputy Assistant Secretary (Plans, Systems and Analysis).
		Associate Deputy Assistant Secretary (Financial Operations).
	Office of Assistant Secretary Air Force for Acquisition.	Associate Deputy Assistant Secretary, (Science, Technology and Engineering).
		Deputy Assistant Secretary (Science, Technology and Engineering).
		Deputy Assistant Secretary (Acquisition Integration).
		Director, Information Dominance Programs.
		Deputy Air Force Program Executive Officer (Combat and Mission Support).
		Associate Deputy Assistant Secretary (Acquisition Integration).
		Director of Contracting (Special Access Programs.
		Associated Deputy Assistant Secretary (Acquisition Integration).
	Chief Information Office	Deputy Chief, Information Dominance and Deputy Chief Information Officer.
	Office Deputy Assistant Secretary Contracting.	Associate Deputy Assistant Secretary (Contracting).
	Directorate of Space and Nuclear Deterrence.	Associate Director, Nuclear Weapons and Counter proliferation.
		Deputy Assistant Chief of Staff, Strategic Deterrence and Nuclear Integration.
	Office of Assistant Secretary of the Air Force for Manpower and Reserve Affairs.	Deputy Assistant Secretary for Reserve Affairs.
	Air Force Review Boards Agency (Air Force Review Boards Agency)—Field Operating Agency.	Deputy for Air Force Review Boards.
	Office of Assistant Secretary Air Force, Installations, Environment, and Logistics.	Deputy Assistant Secretary (Energy).
		Deputy Assistant Secretary (Logistics).
	Office of Deputy Assistant Secretary Installations.	Deputy Assistant Secretary (Installations).
	Office of the Chief of Staff	Director, Air Force History and Museums Policy and Programs.
		Deputy Director of Staff.

Agency	Organization	Title
	Air Force Office of Safety and Air Force Safety Center (Field Operating Agency).	Deputy Chief of Safety.
	Office of Judge Advocate General	Director, Administrative Law.
	Office of Test and Evaluation	Deputy Director, Test and Evaluation.
		Director, Test and Evaluation.
	Air Force Studies and Analyses Agency (Direct Reporting Unit (DRU)).	Principle Deputy Director, Studies and Analyses, Assessments and Lessons Learned.
		Director, Air Force Studies and Analyses, Assessments and Lessons Learned.
	Office of Deputy Chief of Staff, Warfighting Integration.	Deputy Director, Information Services and Integration.
		Director, Architecture and Operational Support Modernization.
	Office of Deputy Chief of Staff, Installations and Logistics.	Deputy Director, Security Forces.
		Assistant Deputy Chief of Staff, Installation and Logistics.
	Office of Civil Engineer	Deputy Director of Civil Engineers.
	Office of Logistics Readiness	Deputy Director of Logistics.
	Office of Resources	Director of Resource Integration.
		Associate Deputy of Logistics.
	Air Force Center for Environmental Excellence (Field Operating Agency).	Director, Air Force Civil Engineer Center.
	Deputy Chief of Staff, Plans and Programs.	Assistant Deputy Chief of Staff, Strategic Plans and Requirements.
		Deputy Director of Strategic Planning.
	Office of Deputy Chief of Staff, Personnel.	Deputy Director, Force Management Policy.
		Assistant Deputy Chief of Staff, Personnel.
		Director, Airman Development and Sustainment.
		Director, Plans and Integration.
		Deputy Director of Services.
		Deputy Director, Air Force Manpower, Organization and Resources.
		Director, Force Development.
		Deputy Director, Military Force Management.
		Deputy Director, Manpower, Organization and Resources.
	Air Force Personnel Center (Field Operating Agency).	Director, Personnel Operations.
		Executive Director, Air Force Personnel Center.
	Deputy Chief of Staff, Air and Space Operations.	Deputy Director of Operational Planning, Policy, and Strategy.
		Deputy Director, Operations and Readiness.
		Director of Weather.
		Associate Deputy Chief of Staff, Operations, Plans and Requirements.
		Director, Irregular Warfare.
		Deputy Director, Operational Planning, Policy and Strategy.
	Office of Deputy Chief of Staff for Intelligence, Surveillance and Reconnaissance.	Director of Intelligence, Surveillance, and Reconnaissance Innovations and Unmanned Aerial Systems (UAS) Task Force.
	Air Force Operational Test and Evaluation Center (Direct Reporting Unit).	Executive Director, Air Force Operational Test and Evaluation Center (2).
	Air Force Special Operations Command	Executive Director Air Force Special Operations Command.
	Air Force Materiel Command	Director, Manpower, Personnel and Services.
		Director, National Museum of the United States Air Force.
		Director, Financial Management.
		Director, Installations.
		Director of Engineering and Technical Management, F–35 Lightning II Joint Program Office.
		Executive Director, Air Force Material Command.
		Principal Deputy to the Staff Judge Advocate.
		Program Executive Officer, Business Enterprise Systems.
		Director, Enterprise Sourcing Group.
		Executive Director, Air Force Nuclear Weapons Center.
		Director, Communications, Installations, and Mission Support.
	Office of Contracting	Director, Contracting, Air Force Material Command.
	Office of Logistics	Deputy Director, Logistics, Installations and Mission Support.
	Office of Engineering and Technical Management.	Director, Engineering and Technical Management.
	Office of Financial Management and Comptroller.	Deputy Director, Financial Management and Comptroller.
	Office of Plans and Programs	Director, Acquisition, Intelligence, and Requirements.
	Office of Operations Directorate	Deputy Director, Air, Space and Information Operations.
	Air Force Materiel Command Law Office.	Command Counsel.
		Director, Air Force Materiel Command Law Office.

Agency	Organization	Title
	Air Force Office of Scientific Research	Director of Physics and Electronics Sciences.
		Director, Air Force Office of Scientific Research.
	Electronic Systems Center	Program Executive Officer, Battle Management.
		Director, Engineering and Technical Management, Electronic Systems Center.
	Aeronautical Systems Center	Director, Contracting, Aeronautical Systems Center.
		Executive Director, Air Force Life Cycle Management Center.
		Program Executive Officer, Mobility Aircraft.
		Program Executive Officer for Agile Combat Support.
		Director of Engineering, Joint Strike Fighter.
	Engineering Directorate	Director, Engineering, Air Force Life Cycle Management Center.
	Air Force Research Laboratory	Director, Plans and Programs, Air Force Research Laboratory.
		Executive Director, Air Force Research Laboratory.
		Director, Materials and Manufacturing, Air Force Material Command.
	Office of Air Force Research Laboratory, Munitions Directorate.	Director, Munitions, Air Armament Center.
	Office of Information Directorate	Director, Information.
	Office of Directed Energy Directorate	Director, Directed Energy.
	Office of Materials and Manufacturing Directorate.	Director, Materials and Manufacturing.
	Office of Sensors Directorate	Director, Sensors.
	Office of Human Effectiveness Directorate.	Director, Human Effectiveness Directorate.
	Air Force Flight Test Center	Executive Director, Air Force Flight Test Center.
	Air Logistics Center, Oklahoma City	Director of Logistics, Air Force Specialty Codes.
		Executive Director, Air Force Specialty Codes.
		Director, 448th Combat Sustainment Wing.
		Director, Contracting, Air Logistics Center.
		Director, Engineering and Technical Management, Air Force Specialty Center—Engineering.
		Director, 448th Supply Chain Management Wing.
	Air Logistics Center, Warner Robins	Director, Contracting, Warner—Robins, Air Logistics Center.
	Air Logistics Center, Ogden	Director Contracting, Ogden—Air Logistics Center.
		Director, Engineering and Technical Management, Ogden—Air Logistics Center.
	Air Armament Center	Director, Engineering and Technical Management, Air Force Material Center.
	Air Combat Command	Director, Acquisition Management and Integration Center.
		Director, Air Force Global Cyber space Integration Center.
		Deputy Director of Logistics, Air Combat Command.
	Air Mobility Command	Deputy Director of Logistics, Air Mobility Command.
		Deputy Director, Installations and Mission Support, Air Mobility Command.
	Air Education and Training Command	Director, Logistics, Installations and Mission Support, Air Education and Training Command.
		Director, International Training and Education.
	Air Force Reserve Command	Director of Staff.
	United States Central Command	Deputy Director of Logistics and Engineering.
		Deputy Director of Operations Interagency Action Group (IAG).
		Deputy Director, Logistics and Engineering, United State Central Command.
		Director of Resources, Requirements, Budget and Assessment.
	Air Force Space Command	Executive Director, Air Force Space Command.
		Director, Space Protection Program Office.
		Director of Installations and Logistics, Air Force Space Command.
		Executive Director, Air Force Space Command.
	United States Special Operations Command.	President, Joint Special Operations University.
		Director and Chief Information Officer for Special Operations Networks and Communications Center.
		Director, Plans, Policy and Strategy, United States Special Operations Command.
		Director of Acquisition, United States Special Operations Command.
		Deputy Director, Center for Special Operations Acquisition and Logistics.

Agency	Organization	Title
		Director, Interagency Task Force, United States Special Operations Command.
		Director, Financial Management and Comptroller, United States Special Operations Command.
	Air Force Special Operations Command	Director of Financial Management and Comptroller, Air Force Special Operations Command.
	Space and Missile Systems Center	Director, Launch Enterprise.
		Deputy Director and Chief Technical Advisor.
		Director, Military Satellite Communications Systems Wing.
	United States Strategic Command	Director, Capability and Resource Integration.
		Deputy Director, Capability and Resource Integration.
		Associate Director, Capability and Resource Integration.
		Director, Global Innovation Strategy Center.
		Executive Director, Joint Warfare Analysis Center.
		Special Command Advisor, Information Assurance and Cyber Security.
		Director, Command, Control, Command Computer Systems.
		Director, Global Innovation Strategy Center.
		Director, Joint Exercises and Training, United States Strategic Command.
		Deputy Director, Plans and Policy, United States Strategic Command.
	United States Transportation Command	Director, Program Analysis and Financial Management.
		Executive Director, Oint Enabling Capabilities Command.
		Director, Acquisition.
		Deputy Director of Command, Control Communications, and Computer Systems.
		Executive Director.
		Deputy Director, Strategies and Policy, United States Transportation Command.
	Office of Joint Staff	Director, Joint Information Operations Warfare Center.
	United States Northern Command	Director, Programs and Resources.
		Domestic Policy Advisor.
		Deputy Commander, Joint Forces Headquarters—National Capital Region.
		Director, Programs and Resources, United States Northern Command.
		Director, Joint Exercises and Training, United States Northern Command.
		Director, Interagency Coordination, United States Northern Command.
DEPARTMENT OF THE ARMY	Office of the Secretary	Executive Director of the Army National Cemeteries Program.
	Office of the Under Secretary	Deputy Chief Management Officer.
		Deputy Director, Office of Business Transformation, Office of the Under Secretary of the Army.
		Deputy to the Deputy Under Secretary of the Army.
		Director, Business Transformation Directorate.
		Assistant to the Deputy Under Secretary of the Army/Director of Test and Evaluation.
	Office Deputy Under Secretary of Army (Operations Research).	Director, Test and Evaluation Office.
	Office Administrative Assistant to the Secretary of Army.	Administrative Assistant to the Secretary of the Army.
		Deputy Administrative Assistant to the Secretary of the Army/Director for Shared Services.
		Director, United States Army Center of Military History/Chief of Military History.
		Executive Director United States Army Information Technology Agency.
		Executive Director, United States Army Headquarters Services.
	Office Assistant Secretary Army (Civil Works).	Deputy Assistant Secretary of the Army (Management and Budget).
	Office Assistant Secretary Army (Financial Management and Comptroller).	Director of Investment.
		Director of Management and Control.
		Deputy Assistant Secretary of the Army (Financial Operations).
		Deputy Assistant Secretary of the Army (Cost and Economics).
		Director, Programs and Strategy.
		Deputy Director and Senior Advisor for Army Budget (Deputy Assistant of the Army (Budget)).
		Director, Financial Information Management.

Agency	Organization	Title
		Director for Accountability and Audit Readiness.
		Director, Military Personnel and Facilities.
	Office Assistant Secretary Army (Installations, Energy and Environment).	Deputy Assistant Secretary of the Army (Infrastructure Analysis and Evaluation).
		Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).
	Office Assistant Secretary Army (Manpower and Reserve Affairs).	Deputy Assistant Secretary of the Army (Military Personnel/Quality of Life).
		Deputy Assistant Secretary of the Army (Civilian Personnel)/Director Civilian Senior Leader Management Office).
		Deputy Assistant Secretary of Army for Marketing/Director, Army Marketing Research Group.
		Deputy Assistant Secretary of the Army (Diversity and Leadership).
		Deputy Assistant Secretary of the Army (Army Review Boards Agency).
		Deputy Assistant Secretary of the Army (Plans and Resources).
	Office Assistant Secretary Army (Acquisition, Logistics and Technology).	Deputy Assistant Secretary of the Army for Defense Exports and Cooperation.
		Director, Systems of Systems Engineering.
		Deputy Assistant Secretary of the Army (Acquisition Policy and Logistics)/Assistant Secretary of the Army (Acquisition, Logistics and Technology).
		Executive Director for Acquisition Services, Assistant Secretary Army (Acquisition, Logistics and Technology).
		Director, System of System Engineering Integration.
		Director for Technology.
		Deputy Assistant Secretary for Research and Technology/Chief Scientist.
		Deputy Assistant Secretary of the Army (Policy and Procurement).
		Deputy Assistant Secretary of the Army for Plans, Programs and Resources.
		Director for Research and Laboratory Management.
		Director for Research and Technology.
	Army Acquisition Executive	Joint Program Executive Officer for Chemical and Biological Defense.
		Program Executive Office, Ground Combat Systems.
		Deputy Program Executive Officer, Ground Combat Systems.
		Deputy Program Executive Officer, Missiles and Space (Fires).
		Deputy Joint Program Executive Officer for Chemical and Biological Defense.
		Deputy Program Executive Officer (Simulation, Training and Instrumentation).
		Deputy Program Executive Officer, Enterprise Information Systems.
		Program Executive Officer Combat Support and Combat Service Support.
		Deputy Program Executive Officer, Combat Support and Combat Service Support.
		Program Executive Officer Simulation, Training and Instrumentation.
		Deputy Program Executive Officer for Soldier.
		Deputy Program Executive Officer, Ammunition.
		Deputy Program Executive Officer for Aviation.
		Program Executive Officer Enterprise, Information Systems.
		Deputy Program Executive Officer, Command Control and Communications Tactical.
		Program Executive Officer, Command Control and Communications (Tactical).
		Program Executive Officer—Ammunition.
		Chief Science and Technology Advisor.
		Program Executive Officer, Intelligence, Electronic Warfare and Sensors.
		Program Executive Officer, Assembled Chemical Weapons Alternative.
	Office of the Inspector General	Principal Director to the Inspector General (Inspections).
	Office of Chief Information Officer/G–6	Principal Deputy, Chief Information Officer/G–6 for Enterprise Integration.
		Director, Cybersecurity.

Agency	Organization	Title
		Director, Governance, Acquisition/Chief Knowledge Officer.
		Director for Army Architecture Integration Cell.
		Deputy Chief Information Officer/G–6.
	Office, Chief of Public Affairs	Principal Deputy Chief of Public Affairs.
	Army Audit Agency	Auditor General, United States Army.
		Deputy Auditor General, Installation, Energy and Environment Audits.
		Deputy Auditor General, Financial Management Audits.
		Deputy Auditor General, Manpower and Training Audits.
		Deputy Auditor General, Acquisition and Logistics Audits.
		Principal Deputy Auditor General.
	United States Army Test and Evaluation Command.	Executive Director—White Sands.
		Executive Director, Operational Test Command.
		Director, Army Evaluation Center.
		Director, Ballistic Missile Evaluation Directorate, Army Evaluation Center.
	Office, Chief Army Reserve	Director Human Capital (Office, Chief Army Reserve).
		Assistant Chief of the Army Reserve.
		Chief Executive Officer.
		Director of Resource Management and Material.
	Office, Assistant Chief of Staff for Installation Management.	Director, Installation Services.
		Deputy Assistant Chief of Staff for Installation Management.
		Director of Resource Integration.
	United States Army Installation Management Command.	Director of Facilities and Logistics.
		Regional Director (Central).
		Regional Director (Pacific).
		Regional Director (Europe).
		Executive Director/Director of Services.
		Director, Human Resources.
		Director, Family, Morale, Welfare and Recreation Programs, G–9.
		Regional Director (Atlantic).
	Office of Deputy Chief of Staff, G–4	Director, Logistics Innovation Agency.
		Director, Logistics Information Management.
		Director of Resource Management.
		Director for Maintenance Policy, Programs and Processes.
		Assistant Deputy Chief of Staff, G–4.
		Director for Supply Policy, Programs and Processes.
	Office of Deputy Chief of Staff, G–8	Assistant Deputy Chief of Staff, G–8.
		Director, Resources/Deputy Director, Force Development.
	Office of Deputy Chief of Staff, G–3	Director, Capabilities Integration Directorate.
		Deputy Director for Plans and Policy.
		Deputy Director of Training and Leader Development.
		Assistant Deputy Chief of Staff for Operations (G–3/5/7).
		Deputy Director for Force Management.
	Office of Deputy Chief of Staff, G–1	Director, Army Resiliency Directorate, ODCS, G–1.
		Director, Military Human Resources Integration.
		Assistant G–1 (Civilian Personnel Policy).
		Assistant Deputy Chief of Staff, G–1.
		Director, Plans and Resources.
		Director for Manprint Directorate.
		Director, Sexual Harassment/Assault Response and Prevention.
	Army Research Institute (Deputy Chief of Staff for Personnel, Field Operating Agency).	Director, United States Army Research Institute and Chief Psychologist.
	Office of the Surgeon General	Chief of Staff.
		Deputy Chief of Staff/Assistant Surgeon General, Force Management.
	United States Army Medical Research and Materiel Command.	Principal Assistant for Acquisition.
		Principal Assistant for Research and Technology.
	United States Army Medical Department Center and School.	Deputy to the Commanding General.
	United States Army Space and Missile Defense Command.	Deputy to the Commander and Senior Department of the Army Civilian for United States Army Space and Missile Defense Command/Army Forces Strategic Command.
		Director, Future Warfare Center.
		Director, Space and Cyber space Technology Director.
		Chief Technology Officer.
		Director, Emerging Technology.
		Director, Capability Dev Integration Directorate, Space and Missile Defense Command.
		Director, Space and Missile Defense Technical Center.
		Director, Space and Missile Defense Battle Laboratory.

Agency	Organization	Title
	U.S. Army Training and Doctrine Command (TRADOC).	Deputy to the Commanding General, Combined Arms Support Command.
		Deputy Chief of Staff G–8, Training and Doctrine Command.
		Deputy Chief of Staff G–1/4 (Personnel and Logistics).
		Deputy to the Commanding General Fires/Director, Capabilities, Development and Integration.
		Deputy to the Commanding General, Signal Center of Excellence.
		Deputy to the Commanding General/Director, Capabilities Development and Integration.
		Deputy to the Commanding General Maneuver Support/Director, Capabilities Development and Integration.
		Deputy to the Commanding General, Combined Arms Center.
		Deputy G–3/5 for Operations and Plans, Training and Doctrine Command.
		Director, Capability Development Integration Directorate (CDID).
		President, Army Logistics University.
		Director, Concepts to Capabilities and Deputy Force 2025 Integration, Army Capabilities Integration Center.
		Deputy to the Commanding General Army Aviation Center of Excellence/Director, Capabilities Development and Integration.
		Assistant Deputy Chief of Staff, G–3/5/7, Training and Doctrine Command/Deputy G–3 for Training.
		Deputy Chief of Staff, G6 (Training and Doctrine Command).
	Training and Doctrine Command Analysis Center.	Director of Operations (2).
		Director.
	Military Surface Deployment Distribution Command.	Director, Transportation Engineering Agency/Director Joint Distribution Process Analysis Center.
		Deputy to the Commander, Surface Deployment and Distribution Command.
	United States Army Forces Command	Assistant Deputy Chief of Staff, G–6.
		Assistant Deputy Chief of Staff G–3/5/7.
		Assistant Deputy Chief of Staff for Logistics and Readiness.
		Deputy Chief of Staff for Resource Management.
		Assistant Deputy Chief of Staff, G–1.
	United States Army Network Enterprise Technology Command/9th Army Signal Command.	Deputy to Commander/Senior Technical Director/Chief Engineer.
		Deputy for Cyber Operations/Director of Operations.
	United States Army Corps of Engineers	Director, Information Technology Laboratory.
		Chief Military Programs Integration Division.
		Director, Research and Development and Director, Engineering Research and Development Center.
		Director of Contracting.
		Director for Corporate Information.
		Director of Human Resources.
		Director, Real Estate.
		Director of Resource Management.
		Director Contingency Operations/Chief, Homeland Security Office.
	Directorate of Research and Development.	Deputy Director of Research and Development.
	Directorate of Civil Works	Chief, Programs Management Division.
		Director of Civil Works.
		Chief, Planning and Policy Division/Community of Practice.
		Chief, Operations Division and Regulatory Community of Practice.
		Chief, Engineering and Construction Division.
	Directorate of Military Programs	Chief, Installation Support Division.
		Chief, Interagency and International Services Division.
		Director of Military Programs.
		Chief, Environmental Community of Practice.
	Office of Directors of Programs Management.	Division Programs Director, Trans-Atlantic Division.
		Division Programs Director (South Pacific Division).
		Division Programs Director (Northwestern Division).
		Division Programs Director (Great Lake and Ohio River Division).
		Division Programs Director (North Atlantic Division).
		Division Programs Director (Pacific Ocean Division).
		Division Programs Director.

Agency	Organization	Title
		Division Programs Director (South Atlantic Division).
		Division Programs Director (Southwestern Division).
	Office of Directors of Engineering and Technical Services.	Regional Business Director (North Atlantic Division).
		Regional Business Director (Great Lakes, Ohio River Division).
		Regional Business Director (Mississippi Valley Division).
		Regional Business Director (Pacific Ocean Division).
		Regional Business Director (South Atlantic Division).
		Regional Business Director (South Pacific Division).
		Regional Business Director (Southwestern Division).
		Regional Business Director (Northwestern Division).
	Engineer Research and Development Center.	Director, Environmental Laboratory.
		Deputy Director, Engineer Research and Development Center.
		Director, Coastal and Hydraulics Laboratory.
		Director, Geotechnical and Structures Laboratory.
	Engineer Topographic Laboratories, Center of Engineers.	Director, Army Geospatial Center.
	Construction Engineering Research Laboratory Champaign, Illinois.	Director, Construction Engineering Research Laboratories.
	Cold Regions Research and Engineering Laboratory Hanover, New Hampshire.	Director, Cold Regions Research and Engineering Laboratory.
	United States Army Materiel Command	Chief Technology Officer.
		Deputy Chief of Staff for Logistics, G–4.
		Deputy Chief of Staff for Corporate Information/Chief Information Officer.
		Deputy G–3/4 for Current Operations.
		Assistant Deputy Chief of Staff, G–3/4 for Logistics Integration.
	Office of Deputy Chief of Staff for Logistics and Operations.	Deputy G–3/4 for Strategy and Integration.
	Office Deputy Commanding General	Executive Deputy to the Commanding General.
	Office of Deputy Chief of Staff for Personnel.	Deputy Chief of Staff for Personnel.
	Office of the Deputy Chief of Staff for Resource Management.	Assistant Deputy Chief of Staff for Resource Management, G–8/Executive Director for Business.
		Deputy Chief of Staff for Resource Management.
	United States Army Contracting Command.	Executive Director Army Contracting Command, Redstone, Alabama.
		Executive Director, Army Contracting Command, Warren.
		Executive Director, Army Contracting Command, National Capital Region.
		Executive Director, Army Contracting Command, Aberdeen.
		Deputy to the Commander, Mission Installation Contracting Command.
		Deputy to the Commander, United States Army Expeditionary Contracting Command.
		Deputy to the Commanding General, Army Contracting Command.
		Executive Director Army Contracting Command, Rock Island.
	United States Army Security Assistance Command.	Deputy to the Commanding General.
	United States Army Sustainment Command.	Executive Director for Field Support.
		Executive Director for Logistics Civil Augmentation Program.
		Deputy to the Commander.
	Natick Soldier Center	Director, Natick Soldier Research and Development Engineering Center.
	United States Army Communications Election Command (Communications Election Command).	Deputy to the Commanding General/Director Logistics and Readiness Center.
		Director, Software Engineering Directorate.
		Director, Communications-Electronics Life Cycle Management Command Logistics and Readiness Center.
	Communications Electronics Command Research, Development and Engineering Center.	Director, Command Power and Integration Directorate.
		Director, Space and Terrestrial Committee Directorate.
		Director, Intelligence and Information Warfare Directorate.
		Director, Night Vision/Electromagnetics Sensors Directorate.
		Director, Communications-Electronics Research, Development and Engineering Center.
	United States Army Research Laboratory.	Director United States Army Research Laboratory.

Agency	Organization	Title
	Office of Survivability/Lethality Analysis Directorate (Army Research Laboratory).	Director, Survivability/Lethality Analysis Directorate.
	Army Research Office	Director, Army Research Office.
	Office of Sensors and Electron Devices Directorate (Army Research Laboratory).	Director, Sensors and Electron Devices Directorate.
	Weapons and Material Research Directorate (Army Research Laboratory).	Director, Weapons and Materials Research Directorate.
	Human Research and Engineering Directorate (Army Research Laboratory).	Director, Human Dimension Simulations and Training Directorate.
		Director, Computational and Information Sciences Directorate.
	United States Army Aviation and Missile Command (Army Materiel Command).	Director for Test Measurement Diagnostic Equipment Activity.
		Director for Engineering.
		Army Aviation and Missile Command Director, Special Programs (Aviation).
		Executive Director, Aviation and Missile Command Logistics Center.
		Deputy to the Commander.
	Aviation and Missile Research Development and Engineering Center (Research Development and Engineering Center).	Director for Aviation Development.
		Director for Systems Simulation, Software, and Integration.
		Director for Aviation and Missile Research, Development and Engineering Center.
	Aviation Engineering Directorate	Director for Weapons Development and Integration.
		Director of Aviation Engineering.
	Research, Development and Engineering Command.	Deputy Director, Research, Development and Engineering Command.
		Director, Research Development and Engineering Command.
	United States Army Edgewood Chemical Biological Center.	Director, Edgewood Chemical Biological Center.
		Director for Programs Integration.
		Director, Research and Technology Directorate.
		Director, Engineering Directorate.
	Tank-Automotive and Armaments Command (Tank-Automotive and Armaments Command).	Deputy to the Commander.
		Director, Integrated Logistics Support Center.
	Tank-Automotive Research Development and Engineering Center.	Director, Tank-Automotive Research Development and Engineering Center.
		Executive Director for Engineering.
		Director, Research Technology Development and Integration.
		Executive Director for Product Development.
	United States Army Armament Research, Development and Engineering Center.	Director for Armament Research, Development and Engineering.
		Executive Director, Enterprise and Systems Integration Center.
		Executive Director, Munitions Engineering Technology Center, Armament Research, Development and Engineering Center.
		Executive Director, Weapons and Software Engineer Center.
	United States Army Joint Munitions Command.	Deputy to the Commander, Joint Munitions Command.
		Executive Director for Ammunition.
	United States Army Materiel Systems Analysis Activity.	Technical Director.
		Director, Army Materiel Systems Analysis Activity.
	Headquarters, United States Army, Europe.	Deputy Chief of Staff G–8.
		Deputy Chief of Staff, G–1.
		Director, European Security and Defense Policy Defense Advisor to United States Mission (Europe).
	United States Army Special Operations Command.	Deputy to the Commanding General.
	United States Army Military District of Washington.	Superintendent, Arlington National Cemetery.
	United States Southern Command	Deputy Director, Strategy and Policy.
		Director, J–8 (Resources and Assessments Directorate).
		Deputy Director of Operations, J–3.
		Director for Partnering.
	United States European Command	Director, Interagency Partnering, (J–9).
	United States Africa Command	Deputy Director of Resources (J–1/J–8).
		Director of Resources (J–1/J–8), United States Africa Command.

Agency	Organization	Title
		Deputy Director of Program, (J–5), United States Africa Command.
		Foreign Policy Advisor for United States Africa Command.
	Joint Special Operations Command	Executive Director for Resources, Support, and Integration.
	United States Army Cyber Command/Second Army.	Deputy to Commander, Army Cyber Command/2nd Army.
	United States Army Command, North	Deputy to the Commanding General, Army North.
	Headquarters, United States Army, Pacific.	Strategic Effects Director to Commander, United States Army Pacific.
		Assistant Chief of Staff, G–8.
	United States Forces, Korea	Director for Forces, Resources and Assessments (J–8).
		Deputy Director for Transformation and Re-stationing.
	Joint Improvised Explosive Device Defeat Organization.	Chief Information Officer.
		Director, Counter Improvised Explosive Device Operational Integration Center.
		Vice Director, Joint Improvised Explosive Device Defeat Organization.
		Deputy Director, Rapid Capability Delivery.
DEPARTMENT OF THE NAVY	Office of the Secretary	Deputy Assistant for Administration.
		Assistant for Administration.
		Director, Sexual Assault Prevention and Response.
		Director, Operations Directorate.
	Office of the Under Secretary of the Navy.	Senior Director (Policy and Strategy).
		Senior Director (Capabilities and Concepts).
		Senior Director for Policy.
		Principal Director to the Under Secretary of the Navy for Plans, Policy, Oversight and Integration.
		Principal Deputy Under Secretary of the Navy Business Operations and Transformation).
		Senior Director for Security.
		Director, Small Business Programs.
		Director, Operations Integration Group.
		Chief Information Officer.
		Senior Director (Policy and Strategy).
		Principal Director Deputy Under Secretary of the Navy (Policy).
		Deputy of Business Operations/Office of Business Transformation.
	Office of the Naval Inspector General	Deputy Naval Inspector General.
	Office of the Auditor General	Auditor General of the Navy.
		Assistant Auditor General for Installation and Environment Audits.
		Assistant Auditor General for Manpower and Reserve Affairs Audits.
		Deputy Auditor General of the Navy.
		Assistant Auditor General for Financial Management and Comptroller Audits.
		Assistant Auditor General for Research, Development, Acquisition and Logistics Audits.
	Office of the Assistant Secretary of Navy (Manpower and Reserve Affairs).	Director, Human Resources Policy and Programs Department.
		Principal Deputy, Manpower and Reserve Affairs.
		Deputy Assistant Secretary of the Navy (Reserve Affairs and Total Force Integration).
		Assistant General Counsel (Manpower and Reserve Affairs).
		Deputy Assistant Secretary of the Navy (Civilian Human Resources).
	Office of Civilian Human Resources	Director, Human Resources Systems and Analytics.
		Director, Human Resources Operations.
	Office Assistant Secretary of Navy (Energy, Installations and Environment).	Deputy Assistant Secretary of the Navy for Infrastructure, Strategy and Analysis.
		Assistant General Counsel (Energy, Installations and Environment).
		Director, Joint Guam Program Office.
	Office Assistant Secretary of the Navy (Research, Development and Acquisition).	Assistant General Counsel (Research, Development and Acquisition).
		Director, Program Analysis and Business Transformation.
		Deputy Assistant Secretary of the Navy (Management and Budget).
		Executive Director, Navy International Programs Office.
		Principal Civilian Deputy Assistant Secretary of the Navy (Acquisition Workforce).
		Chief of Staff/Policy.

Agency	Organization	Title
		Director, Ohio Replacement Program Office.
		Executive Director, F–35, Joint Program Office.
		Deputy Assistant Secretary of the Navy (Command, Control, Communications, Computers and Intelligence) Space).
		Deputy for Test and Evaluation.
		Program Executive Officer for Defense Healthcare Management Systems.
		Assistant Auditor General of the Navy for Research Development and Acquisition.
		Special Assistant to Assistant Secretary of the Navy (Research, Development and Acquisition).
		Deputy Assistant Secretary of the Navy (Ships).
	Office of Program Executive Officers	Director for Integrated Combat Systems for Integrated Warfare Systems.
		Deputy Program Executive Officer for Unmanned Aviation Programs.
		Director for Above Water Sensors Directorate.
		Executive Director, Combatants, Program Executive Officers Ships.
		Executive Director, Program Executive Officers for Aircraft Carriers.
		Deputy Program Executive Officers for Strike Weapons.
		Deputy Program Executive Officers for Tactical Air Programs.
		Executive Director, Program Executive Officers for Integrated Warfare Systems.
		Executive Director, Amphibious, Auxiliary and Sealift Ships, Program Executive Officers Ships.
		Executive Director, Program Executive Office Submarines.
		Deputy Program Executive, Officers Air Assault and Special Mission.
		Program Executive Officer (Enterprise Information Systems).
		Executive Director, Program Executive Office, Littoral Combat Ships.
		Executive Director, Program Executive Office for Space Systems.
		Executive Director for Command, Control, Communications, Computers and Intelligence (C4I).
		Program Executive Officer, Land Systems.
	Strategic Systems Programs	Branch Head Re-entry Systems Branch.
		Counsel, Strategic Systems Programs.
		Assistant for Missile Production, Assembly and Operations.
		Chief Engineer.
		Director, Plans and Programs Division.
		Assistant for Systems Integration and Compatibility.
		Director, Integrated Nuclear Weapons Safety and Security/ Director Strategic Systems Programs.
		Assistant for Missile Engineering Systems.
		Head, Resources Branch (Comptroller) and Deputy Director, Plans and Program Division.
		Technical Plans and Payloads Integration Officer.
		Assistant for Shipboard Systems.
	Office of the Assistant Secretary of Navy (Financial Management and Comptroller).	Deputy Assistant Secretary of the Navy (Financial Policy and Systems).
		Special Assistant (2).
		Principal Deputy Assistant Secretary of the Navy Financial Management and Comptroller (2).
		Deputy Director, Financial Operations.
		Deputy Assistant Secretary of the Navy for Cost and Economics.
		Deputy Assistant Secretary of the Navy for Financial Operations.
		Director, Budget and Policy and Procedures Division.
		Director, Investment and Development Division.
		Assistant General Counsel (Financial Management and Comptroller).
		Associate Director, Office of Budget/Fiscal Management Division.
		Director, Civilian Resources and Business Affairs Division.
	Office of the General Counsel	Assistant General Counsel (Acquisition Integrity).
		Assistant General Counsel (Intelligence Law).
		Counsel, Military Sealift Command.

Agency	Organization	Title
		Special Counsel for Litigation.
	Naval Criminal Investigative Service	Criminal Investigator, Executive Assistant Director for Criminal Operations.
		Criminal Investigator, Executive Assistant Director for Atlantic Operations.
		Criminal Investigator, Director, Naval Criminal Investigative Service.
		Criminal Investigator, Deputy Director, Naval Criminal Investigative Service.
		Criminal Investigator, Executive Assistant Director for Management and Administration.
		Criminal Investigator, Executive Assistant Director for Global Operations.
		Criminal Investigator, Executive Assistant Director for Pacific Operations.
	Office of Chief of Naval Operations	Deputy Director, Unmanned Warfare.
		Deputy Director, Expeditionary Warfare Division.
		Assistant Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education).
		Deputy Director Energy and Environmental Readiness (N45b).
		Deputy Director, Undersea Warfare Division.
		Assistant Deputy Chief of Naval Operations, Fleet Readiness and Logistics.
		Director Naval History and Heritage Command.
		Deputy Director, Fleet Readiness Division.
		Head, Campaign Analysis Branch.
		Assistant Deputy Chief of Naval Operations (Logistics).
		Assistant Deputy Chief of Naval Operations (Resources, Warfare Requirements and Assessments) N8b.
		Financial Manager and Chief Resources Officer for Manpower, Personnel, Training and Education.
		Deputy Director Surface Warfare Division.
		Deputy Director, Air Warfare.
		Deputy Director, Program Division (N80b).
		Assistant Deputy Chief of Naval Operations, Warfare Systems.
		Director, Strategic Mobility and Combat Logistics Division.
		Director, Special Programs.
		Deputy Director, Afloat Readiness and Maintenance Division (N43).
		Deputy Director for Strategy and Policy.
		Director, Assessment and Compliance (N2/N6bc).
		Assistant Deputy Chief of Naval Operations for Information Dominance (N2/N6).
	Office of Commander, Navy Installations Command.	Deputy Commander.
		Director of Operations.
		Director, Strategy and Future Requirements.
		Comptroller.
		Deputy Regional Commander (Southeast).
		Counsel, Commander Navy Installations Command.
		Deputy Regional Commander (Mid-Atlantic).
		Director, Total Force Manpower.
	Bureau of Medicine and Surgery	Deputy Chief, Total Force.
		Executive Director, Bureau of Medicine and Surgery.
		Deputy Chief, Resource Management/Comptroller.
	Military Sealift Command	Counsel, Military Sealift Command.
		Comptroller.
		Director, Military Sealift Command Manpower and Personnel.
		Director, Contractor Operated Ships.
		Director, Government Operations and Special Mission Ships.
		Executive Director.
	Naval Meteorology and Oceanography Communications, Stennis Space Center, Mississippi.	Technical/Deputy Director.
	Office of Commander, United States Fleet Forces Command/Joint Forces Command.	Chief of Staff.
		Deputy Director, Force Certification.
		Deputy Chief of Staff, Personnel Development and Allocation.
		Executive Director, Navy Warfare Development Command.
		Deputy Chief of Staff, Fleet Installation and Environment.

Agency	Organization	Title
		Executive Director, Fleet Resources and Readiness Integration.
		Assistant Deputy Chief of Staff, Fleet Policy and Capabilities Requirements.
		Deputy for Naval Air and Missile Defense Command.
		Director, Command, Control, Communications, Computer, Combat Systems, Intelligence and Strategic/Command Information Officer.
	Office of the Commander, Submarine Forces.	Executive Director, Submarine Forces.
	Office of the Navy Cyber Forces	Deputy Commander.
	Office of the Commander, United States Pacific Command.	Director for Forces Resources and Management.
		Chief Information Officer.
		Director, Pacific Outreach Directorate.
	Office of the Commander, United States Pacific Fleet.	Executive Director, Total Force Management.
		Executive Director, Pacific Fleet Plans and Policy.
		Executive Director, Naval Air Forces.
		Executive Director for Communications and Information Systems and Chief Information Officer.
		Deputy Chief of Staff for C–4/Chief Information Officer.
		Executive Director, Naval Surface Forces.
		Executive Director, Naval Air Forces.
		Deputy for Naval Mine and Anti-Submarine Warfare Command.
		Chief of Staff.
	Naval Air Systems Command Headquarters.	Director, Aviation Readiness and Resource Analysis.
		F–35 Product Support Manager.
		Counsel, Naval Air Systems Command.
		Director of Contracts, F–35 Joint Strike Fighter.
		Director, Cost Estimating and Analysis.
		Assistant Commander, Corporate Operations and Total Force.
		Deputy Assistant Commander for Logistics and Industrial Operations.
		Deputy Commander, Naval Air Systems Command.
		Deputy Assistant Commander for Research and Engineering.
		Assistant Commander for Acquisition Processes and Execution.
		Director, Tactical Aircraft and Missiles Contracts Department.
		Director, Logistics Management Integration.
		Director, Air Vehicles and Unmanned Air Vehicles.
		Director, Avionics Department.
		Director, Systems Engineering Department.
		Comptroller.
		Assistant Commander for Contracts.
		Director of Logistics and Sustainment/F–35 Joint Strike Fighter.
		Director, Air Platform Systems.
		Director, Industrial Operations.
		Director, Strike Weapons, Unmanned Aviation, Naval Air Programs Contracts Department.
		Director, Aviation Readiness and Resource Analysis.
		Director, Design Interface and Maintenance Planning.
		Director, Propulsion and Power.
		Deputy Counsel, Office of Counsel.
		Director, Air Anti-Submarine Warfare, Assault and Special Mission Programs Contracts Department.
	Naval Air Warfare Center Aircraft Division.	Director, Flight Test Engineering.
		Director, Battlespace Simulation.
		Deputy Assistant Commander for Test and Evaluation/Executive Director Naval Air Warfare Center Aircraft Division/Director, Test and Evaluation.
		Director, Aircraft Launch and Recovery Equipment/Support Equipment.
		Director, Integrated Systems Evaluation Experimentation and Test Department.
	Naval Air Warfare Center Weapons Division, China Lake, California.	Director, Software Engineering.
		Director, Range Department.
		Director, Electronic Warfare/Combat Systems.
		Director, Weapons and Energetics Department.
		Executive Director, Naval Air Warfare Center Weapons Division/Director, Research Engineering.

Agency	Organization	Title
	Naval Air Warfare Center Training Systems Division.	Director, Human Systems Department.
	Space and Naval Warfare Systems Command.	Assistant Chief Engineer for Mission Engineering.
		Assistant Chief Engineer for Certification and Mission Assurance.
		Director, Readiness/Logistics Directorate.
		Comptroller, Business Resources Manager.
		Director, Contracts.
		Counsel, Space and Naval Warfare Systems Command.
		Deputy Chief Engineer.
		Assistant Chief Engineer for Mission Architecture and Systems Engineering.
		Director, Corporate Operations/Command Information Officer.
		Executive Director, Fleet Readiness Directorate.
		Executive Director.
		Chief Management Officer.
	Space and Naval Warfare Systems Center.	Counsel, Space and Naval Warfare Systems Command.
		Director, Science and Technology.
		Executive Director.
		Comptroller/Business Resource Manager.
	Space and Naval Warfare Systems Center, Charleston.	Executive Director.
	Naval Facilities Engineering Command	Director of Public Works.
		Counsel, Naval Facilities Engineering Command.
		Director of Asset Management.
		Assistant Commander/Chief Management Officer.
		Deputy Commander, Acquisition.
		Executive Director.
		Comptroller (2).
		Director of Environment.
		Chief Engineer.
	Naval Sea Systems Command	Executive Director for Commander, Navy Regional Maintenance Centers (CNRMC).
		Division Technical Director, Naval Surface Warfare Center, Philadelphia Division.
		Deputy Director, Advanced Aircraft Carrier System Division.
		Director, Fleet Readiness Division.
		Director, Surface Systems Contracts Division.
		Executive Director, Acquisition and Commonality.
		Division Technical Director, Naval Surface Warfare Center Port Hueneme Division.
		Director, Integrated Warfare Systems Engineering Group.
		Nuclear Engineering and Planning Manager.
		Executive Director Naval Surface and Undersea Warfare Centers.
		Director for Ship Integrity and Performance Engineering.
		Director for Marine Engineering.
		Director of Radiological Controls.
		Assistant Deputy Commander, Maintenance, Modernization, Environment and Safety.
		Director for Advanced Undersea Integration.
		Deputy Commander/Comptroller.
		Director, Reactor Refueling Division.
		Director, Office of Resource Management.
		Program Manager for Commissioned Submarines.
		Director for Submarine/Submersible Design and Systems Engineering.
		Director, Reactor Safety and Analysis Division.
		Director, Surface Ship Systems Division.
		Director, Reactor Plant Components and Auxiliary Equipment Division.
		Executive Director, Undersea Warfare Directorate.
		Executive Director for Logistics Maintenance and Industrial Operations Directorate.
		Deputy Commander, Corporate Operations Directorate.
		Deputy for Weapons Safety.
		Assistant Deputy Commander for Industrial Operations.
		Director, Shipbuilding Contracts Division.
		Director, Cost Engineering and Industrial Analysis.
		Director for Surface Ship Design and Systems Engineering.
		Director, Reactor Materials Division.
		Director for Contracts.

Agency	Organization	Title
		Counsel, Naval Sea Systems Command.
		Executive Director, Surface Warfare Directorate.
		Executive Director.
		Director, Nuclear Components Division.
		Director, Undersea Systems Contracts Division.
		Head, Advanced Reactor Branch.
		Deputy Director for Advanced Submarine Reactor Servicing and Spent Fuel Management.
		Director for Aircraft Carrier Design and Systems Engineering.
		Executive Director, Ship Design, and Engineering Directorate.
		Deputy Counsel, Naval Sea Systems Command.
	Naval Shipyards	Nuclear Engineering and Planning Manage, Portsmouth Naval Shipyard.
		Naval Shipyard Nuclear Engineering and Planning Manager, Norfolk Naval Shipyard.
		Nuclear Engineering and Planning Manager, Pearl Harbor Naval Shipyard.
		Nuclear Engineering and Planning Manager, Puget Sound Naval Shipyard.
	Naval Surface Warfare Center	Division Technical Director, Naval Surface Warfare Center, Dahlgren Division (2).
	Naval Undersea Warfare Center	Technical Director.
	Naval Surface Warfare Center, Crane Division.	Division Technical Director, Naval Surface Warfare Center, Crane, Indiana.
	Naval Undersea Warfare Center Division, Keyport, Washington.	Division Technical Director, Naval Undersea Warfare Center, Keyport Division (2).
	Naval Surface Warfare Center, Corona Division.	Division Technical Director, Naval Surface Warfare Center, Corona Division.
	Naval Surface Warfare Center, Indian Head Division.	Division Technical Director, Naval Surface Warfare Center Indian Head Explosive Ordinance Disposal Technology Division.
	Naval Surface Warfare Center, Carderock Division.	Division Technical Director, Naval Surface Warfare Center, Carderock Division.
	Naval Surface Warfare Center, Dahlgren Division.	Division Technical Director Naval Surface Warfare Center, Panama City Division.
	Naval Undersea Warfare Center Division, Newport, Rhode Island.	Division Technical Director, Naval Undersea Warfare Center, Newport Division (2).
	Naval Supply Systems Command Headquarters.	Assistant Commander for Financial Management/Comptroller.
		Counsel, Naval Supply Systems Command.
		Deputy Commander, Acquisition, Naval Supply Systems Command.
		Vice Commander.
		Senior Acquisition Logistician/Enterprise Resource Planning Program Manager.
		Executive Director, Office of Special Projects.
		Deputy Commander, Corporate Operations.
	Fleet and Industrial Supply Centers	Vice Commander, Global Logistics Support.
	Office of Weapon Systems Support	Vice Commander, Navy Weapon Systems Support.
	United States Marine Corps Headquarters Office.	Counsel for the Commandant.
		Assistant Deputy Commandant, Installations and Logistics (E-Business and Contracts).
		Director, Manpower Plans and Policy Division.
		Deputy Assistant Deputy Commandant, Installations and Logistics (Facilities).
		Director, Program Assessment and Evaluation Division.
		Assistant Deputy Commandant for Aviation (Sustainment).
		Assistant Deputy Commandant for Manpower and Reserve Affairs.
		Assistant Deputy Commandant, Resources.
		Director Program Analysis and Evaluation Division.
		Director Office of Marine Corps Communication.
		Assistant Deputy Commandant for Plans Policies and Operations (Security).
		Deputy Counsel for the Commandant of the Marine Corps.
		Assistant Deputy Commandant for Programs and Resources.
		Assistant Deputy Commandant, Installations and Logistics.
		Assistant Deputy Commandant, Resources and Fiscal Director, Marine Corps.
	Marine Corps Systems Command	Deputy Commander for Resource Management.
		Executive Director.

Agency	Organization	Title
		Chief Engineer, Marine Corps Systems Command.
	Marine Corps Combat Development Command; Quantico, Virginia.	Executive Deputy, Training and Education Command.
	Marine Corps Logistics Command Albany, Georgia.	Executive Deputy, Marine Corps Logistics Command.
	Office of Naval Research	Director, Life Sciences Research Division.
		Director, Ship Systems and Engineering Division.
		Director for Aerospace Science Research Division.
		Director, Mathematical, Computer, and Information Sciences Division.
		Director, Ocean, Atmosphere and Space Science, Technology Processes and Prediction Division.
		Director, Undersea Weapons, Naval Materials Science and Technology Division.
		Director of Innovation.
		Head, Expeditionary Warfare and Combating Terrorism Science and Technology Department.
		Patent Counsel of the Navy.
		Counsel, Office of Naval Research.
		Executive Director.
		Head, Warfighter Performance Science and Technology Department.
		Head, Command, Control, Communications, Intelligence, Surveillance, and Reconnaissance (C4isr) Science and Technology Department.
		Head, Ocean, Battlespace Sensing Science and Technology Department.
		Director of Transition.
		Head, Sea Warfare and Weapons Science and Technology Department.
		Executive Director for Acquisition Management.
		Comptroller.
		Director, Hybrid Complex Warfare Science and Technology Division.
		Head, Air Warfare and Weapons Science and Technology Department.
		Head, Command, Control, Communications, Intelligence, Surveillance, and Reconnaissance (C4isr) Science and Technology Department.
		Director, Mathematics Computer and Information Sciences (MCIS) Division.
		Director, Electronics, Sensors, and Networks Research Division.
	Naval Research Laboratory	Superintendent, Marine Geosciences Division.
		Superintendent, Oceanography Division.
		Superintendent, Spacecraft Engineering Department.
		Superintendent, Center for Bio-Molecular Science and Engineering.
		Superintendent, Space Sciences Division.
		Superintendent, Radar Division.
		Superintendent, Plasma Physics Division.
		Superintendent, Electronics Science and Technology Division.
		Superintendent, Remote Sensing Division.
		Superintendent, Marine Meteorology Division.
		Director of Research.
		Associate Director of Research for Material Science and Component Technology.
		Superintendent, Tactical Electronic Warfare Division.
		Associate Director of Research for Business Operations.
		Associate Director of Research for Ocean and Atmospheric Science and Technology.
		Associate Director of Research for Systems.
		Superintendent, Space Systems Development Department.
		Director, Naval Center for Space Technology.
		Superintendent, Acoustics Division.
		Superintendent, Information Technology Division.
		Superintendent, Material Science and Technology Division.
		Superintendent, Marine Meteorology Division.
		Superintendent, Optical Sciences Division.
OFFICE OF THE SECRETARY OF DEFENSE, OFFICE OF THE INSPECTOR GENERAL.	Office of the General Counsel	General Counsel.
	Office of Communications and Congressional Liaison.	Assistant Inspector General, Office of Communications and Congressional Liaison.
	Office of the Inspector General	Principal Deputy Inspector General.

Agency	Organization	Title
		Deputy Inspector General for Overseas Contingency Operations.
	Office of the Deputy Inspector General for Auditing.	Deputy Inspector General for Auditing.
	Office of the Principal Deputy Inspector General for Auditing.	Principal Assistant Inspector General for Auditing.
	Office of the Acquisition and Contract Management.	Assistant Inspector General for Acquisition and Contract Management.
	Department of Defense Payments and Accounting Operations.	Assistant Inspector General for Contract Management and Payments.
	Financial Management and Reporting	Assistant Inspector General for Financial Management and Reporting (2).
	Readiness, Operations and Support	Assistant Inspector General for Readiness and Cyber Operations.
	Deputy Inspector General for Investigations.	Deputy Inspector General for Investigations.
		Deputy Director Defense Criminal Investigative Service.
	Defense Criminal Investigative Service	Assistant Inspector General for Investigations (2).
		Assistant Inspector General for International Operations.
	Office of the Deputy Inspector General for Policy and Oversight.	Deputy Inspector General for Policy and Oversight.
	Office of Audit Policy and Oversight	Assistant Inspector General for Audit Policy and Oversight.
	Office of Investigative Policy and Oversight.	Assistant Inspector General for Investigative Policy and Oversight.
	Office of the Deputy Inspector General for Intelligence and Special Program Assessments.	Deputy Inspector General for Intelligence and Special Program Assessments (2).
	Office of Administration and Management.	Assistant Inspector General for Administration and Management.
	Office of the Deputy Inspector General for Special Plans and Operations.	Deputy Inspector General for Special Plans and Operations.
	Office of the Deputy Inspector General for Administrative Investigations.	Deputy Inspector General, Administrative Investigations.
DEFENSE NUCLEAR FACILITIES SAFETY BOARD.	Defense Nuclear Facilities Safety Board	Group Lead for Nuclear Facility Design and Infrastructure.
		Group Lead for Performance Assurance.
		Deputy General Manager.
		Deputy General Counsel.
		Group Lead for Nuclear Materials Processing and Stabilization.
		Technical Director.
		Group Lead for Nuclear Weapon Programs.
		Group Lead for Nuclear Programs and Analysis.
		Deputy Technical Director.
DEPARTMENT OF EDUCATION	Office of the Chief Financial Officer	Director, Contracts and Acquisitions Management.
		Deputy Chief Financial Officer, Management and Operations.
		Deputy Chief Financial Officer.
		Director, Financial Improvement and Post Audit Operations.
	Office of the Chief Information Officer	Director, Information Assurance and Chief Information Security Officer.
		Chief Information Officer.
	Office of Management	Deputy Human Resources Director.
		Director, Human Capital and Client Services.
		Chairperson, Education Appeal Board.
		Director of Security, Facilities and Logistical Services.
		Director, Security Services.
	Office of the General Counsel	Assistant General Counsel for Educational Equity.
		Assistant General Counsel for Business and Administration Law.
		Assistant General Counsel for Postsecondary Education and Education Research Division.
	Office for Civil Rights	Enforcement Director (3).
		Deputy Assistant Secretary for Enforcement.
	Institute of Education Sciences	Associate Commissioner, Assessments Division.
	Office of Federal Student Aid	Chief Financial Officer.
DEPARTMENT OF EDUCATION OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Interim Assistant Inspector General for Management Services.
		Deputy Assistant Inspector General for Investigation Services.
		Deputy Assistant Inspector General for Audit Services.
		Assistant Inspector General for Management Services.
		Counsel to the Inspector General.
		Assistant Inspector General for Investigation Services.
		Assistant Inspector General for Audit Services.
		Deputy Inspector General.

Agency	Organization	Title
		Assistant Inspector General for Information Technology Audits and Computer Crime Investigations.
DEPARTMENT OF ENERGY	Office of the Under Secretary for Science.	Chief Security Officer.
	Office of Advanced Research Projects Agency—Energy.	Chief Counsel.
	Loan Programs Office	Director, Portfolio Management Division.
		Chief Counsel, Loan Program Office.
		Director, Portfolio Management Division.
		Chief Counsel.
	National Nuclear Security Administration.	Deputy Manager, Livermore Field Office.
		Manager, Livermore Field Office.
		Manager, Sandia Field Office.
		Director, Office of Policy.
		Chief of Staff and Associate Principal Deputy Administrator.
		Principal Deputy Associate Administrator for Safety Infrastructure and Operations.
		Assistant Deputy Administrator for Strategic Partnership Programs.
		Director, Office of Cost Estimating and Program Evaluation.
		Chief Scientist.
		Deputy Director, Instrumentation and Control Division.
	Office of the General Counsel	Deputy General Counsel for Procurement and Tech Transfer.
		General Counsel.
	Office of the Associate Administrator for Acquisition and Project Management.	Director, Acquisition Management.
		Federal Project Director (Uranium Processing Facility).
		Director, Office of Enterprise Project Management.
		Deputy Associate Administrator for Acquisition and Project Management.
		Deputy Director, Acquisition Management.
		Federal Project Director, Chemistry and Metallurgy Research Replacement Facility.
		Associate Administrator for Acquisition and Project Management.
	Office of Management and Budget	Associate Administrator for Management and Budget.
		Director, Office of Human Capital Management.
		Director, Office of Field Financial Management.
	Office of the Associate Administrator for Safety, Infrastructure and Operations.	Deputy Associate Administrator for Safety.
		Deputy Associate Administrator for Enterprise Stewardship.
	Office of the Deputy Administrator for Defense Programs.	Director, Office of Inertial Confinement Fusion.
		Manager, Los Alamos Site Office.
		Manager, Sandia Site Office.
		Manager, Los Alamos Site.
		Deputy Manager, Nevada Site Office.
		Manager, Nevada Field Office.
		Manager, Kansas City Site Office.
		Manager, Savannah River Site Office.
		Deputy Manager, Los Alamos Site Office.
		Assistant Deputy Administrator for Stockpile Management.
		Assistant Deputy Administrator for Research Development, Test and Evaluation.
		Principal Assistant Deputy Administrator for Defense Program.
		Assistant Deputy Administrator for Systems Engineering Integration.
		Assistant Deputy Administrator for Major Modernization Programs.
		Manager, Nuclear National Security Agency Production Office.
		Manager Livermore Field Office.
		Uranium Program Manager.
	Office of the Deputy Administrator for Defense Nuclear Nonproliferation.	Chief Science and Technology Officer.
		Associate Assistant Administrator for Defense Nuclear Nonproliferation Research and Development.
		Associate Assistant Deputy Administrator, Nonproliferation and Arms Control.
		Senior Program Advisor.
	Office of the Deputy Administrator for Naval Reactors.	Director, Reactor Engineering Division.
		Senior Naval Reactors Representative (Puget Sound Naval Ship).
		Program Manager, Advanced Technology Development.
		Director, Instrumentation and Control Division.
		Senior Naval Reactors Representative.

Agency	Organization	Title
		Director, Regulatory Affairs.
		Deputy Director for Naval Reactors.
		Director, Advanced Submarine Systems Division.
		Deputy Director, Advanced Submarine Systems Division.
		Program Manager, Prototype and Moored Training Ship Operations and Inactivation Program.
		Senior Naval Reactors Representative (Newport News, Virginia).
		Director, Information Technology Management.
		Assistant Manager for Operations.
		Senior Naval Reactors Representative (Yokosuka, Japan).
		Deputy Director, Nuclear Technology Division.
		Program Manager for Surface Ship Nuclear Propulsion.
		Manager, Naval Reactors Laboratory Field Office.
		Program Manager, Virginia Class Subs and United States/ United Kingdom Technology Exchange.
		Director, Governmental Affairs.
		Program Manager, New Ship Design.
		Senior Naval Reactors Representative (Groton, Connecticut).
		Director, Nuclear Technology Division.
	Office of Defense Nuclear Security	Director, Office of Security Operations and Programmatic Planning.
		Director, Office of Nuclear Materials Integration.
	National Nuclear Security Administration Field Site Offices.	Deputy Manager, Nevada Field Office.
		Deputy Manager, Livermore Field Office.
		Deputy Manager, Sandia Field Office.
		Deputy Manager, National Nuclear Security Administration Production Office.
	Office of Intelligence and Counterintelligence.	Principal Deputy Director, Office of Intelligence and Counterintelligence.
		Deputy Director for Intelligence Analysis.
		Director Office of Intelligence and Counterintelligence.
		Deputy Director for Counterintelligence.
		Senior Advisor.
	Office of Health, Safety and Security	Deputy Director, Office of Nuclear Safety.
		Congressional and Public Affairs Manager.
	Office of the Chief Information Officer ..	Principal Deputy Chief Information Officer for Enterprise Information Resources Management.
		Deputy Chief Information Officer.
		Associate Chief Information Officer for Cyber Security.
		Associate Chief Information Officer for Energy Information Technology Services.
	Office of the Chief Human Capital Officer.	Director, Office of Human Capital Policy Accountability and Technology.
		Director, Office of Human Capital Strategy, Budget and Performance Metrics.
		Director, Office of Learning and Workforce Development (Chief Learning Officer).
		Director, Office of Corporate Executive Management.
		Director, Office of Human Resources Services.
		Deputy Chief, Human Capital Officer.
		Director, Office of Human Capital Management.
		Director, Human Resources Shared Service Center for Science and Energy.
		Director, Human Resources Shared Service Center, Science and Energy.
		Director, Human Resources Shared Service Center for Management and Performance.
	Office of Management	Director, Office of Asset Management.
		Director, Office of Contract Management.
		Director, Office of Headquarters Procurement Services.
		Director, Project Management.
		Director.
		Director, Office of Policy.
		Director, Office of Administration.
		Director, Office of Management.
	Office of Project Management Oversight and Assessments.	Director, Office of Project Management Oversight and Assessments.
		Director, Office of Project Assessments.
		Deputy Director, Office of Project Management Oversight and Assessments.
	Office of the Chief Financial Officer	Deputy Director, Budget Analysis and Coordination.

Agency	Organization	Title
		Assistant Deputy Chief Financial Officer, Financial System Integration.
		Director, Office of Corporate Information Systems.
		Director, Office of Finance and Accounting.
		Deputy Director, Office of Finance and Accounting.
		Senior Budget Officer.
		Deputy Chief Financial Officer.
		Director, Office of Budget.
		Deputy Director, Budget Operations.
	Office of the Assistant Secretary for Electricity Delivery and Energy Reliability.	Principal Deputy Assistant Secretary.
	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Chief Operations Officer.
	Assistant Secretary for Energy Efficiency and Renewable Energy.	Director, Geothermal Technologies Office.
		Director for Procurement Services Division.
		Deputy Director, Building Technologies Office.
		Director, Wind and Water Power Technologies Office.
		Director, Business Services Division.
		Director, Budget Office.
	United States Energy Information Administration.	Director, Office of Petroleum Gas and Biofuels Analysis.
		Director, Office of Integrated and International Energy Analysis.
		Deputy Administrator, Energy Information Administration.
		Director, Office of Energy Consumption and Efficiency Analysis.
		Director, Office of Energy Markets and Financial Analysis.
		Director, Office of Electricity, Renewables and Uranium Statistics.
		Director, Office of Electricity, Coal, Nuclear and Renewable.
		Director, Office of Survey Development and Statistical Integration.
		Assistant Administrator for Energy Statistics.
		Director, Office of Energy Consumption and Efficiency Statistics.
		Director, Office of Petroleum and Biofuels Statistics.
		Director, Office of Oil, Gas and Coal Supply Statistics.
		Director, Office of Electricity, Coal Nuclear and Renewables.
		Assistant Administrator for Energy Analysis.
		Assistant Administrator for Communications.
		Assistant Administrator for Resources and Technology Management.
	Office of the Assistant Secretary for Environmental Management.	Chief, Nuclear Safety (2).
	Environmental Management Consolidated Business Center.	Chief Counsel.
	Office of Science	Site Office Manager, Princeton.
		Chief Counsel.
		Berkeley/SLAC Site Office Manager.
		Director Office of Scientific and Technical Information.
		Site Office Manager, Fermi.
		Site Office Manager, Argonne.
		Site Office Manager, Brookhaven.
	Office of Planning and Management Oversight.	Associate Deputy Under Secretary for Science and Energy.
	Office of the Assistant Secretary for Fossil Energy.	Director, Office of Strategic Planning and Global Engagement.
		Director, Office of Strategic Planning and Global Engagement.
		Director, Office of Oil and Gas Global Security and Supply.
		Director, Office of Finance, Acquisition and Assistance.
		Chief Counsel.
		Director, Strategic Center for Coal.
		Chief Operating Officer.
		Project Manager, Strategic Petroleum Reserve.
		Director, Research and Development.
		Director, Office of Energy Project Management.
	Chicago Office	Deputy Manager, Chicago Office.
		Assistant Manager, Acquisition and Assistance.
		Manager, Chicago Office.
		Chief Financial Officer.
	Idaho Operations Office	Deputy Manager for Idaho Cleanup Project.

Agency	Organization	Title
		Deputy Manager for Administrative Support, Chief Financial Officer.
		Chief Counsel.
		Manager, Idaho Operations Office.
	Oak Ridge Office	Site Manager, Oak Ridge National Laboratory Site Office.
		Chief Counsel.
		Assistant Manager for Administration.
		Chief Financial Officer.
		Site Manager, Thomas Jefferson National Accelerator Facility.
	Richland Operations Office	Chief Counsel.
		Assistant Manager for Safety and Environment.
		Manager.
	Savannah River Operations Office	Associate Deputy Manager.
	Office of General Counsel	Assistant General Counsel for Enforcement.
		Assistant General Counsel for Procurement and Financial Assistance.
		Assistant General Counsel for General Law.
		Deputy General Counsel.
		Assistant General Counsel for Technology Transfer and Intellectual Property.
	Office of Hearings and Appeals	Deputy Director, Hearings and Appeals (Deputy Chief Administrative Judge).
		Director, Hearings and Appeals (Chief Administrative Judge).
		Director, Hearings and Appeals (Chief Administrative Judge).
	Office of the Assistant Secretary for Nuclear Energy.	Associate Principal Deputy Assistant Secretary, Office of Nuclear Energy.
		Deputy Manager for Operations Support.
		Director, Office of Innovative Nuclear Research.
		Deputy Director, Office of Advanced Reactor Concepts.
		Director, Office of Advanced Reactor Technologies.
		Director, Office of Light Water Reactor Deployment.
		Director, Office of Used Nuclear Fuel Disposition Research and Development.
	Office of the Assistant Secretary for International Affairs.	Senior Advisor.
		Director, Office of Russian and Eurasian Affairs.
		Director, Office of African and Middle Eastern Affairs.
		Director, Office of East Asian Affairs.
		Deputy Assistant Secretary for Middle East, Africa and Eurasia.
		Deputy Assistant Secretary for Asia, Europe and the Americans.
		Director, Office of American Affairs.
	Office of Energy Policy and Systems Analysis.	Deputy Director for Energy Finance Incentives and Program Analysis.
		Deputy Assistant Secretary for Policy Analysis.
	Bonneville Power Administration	Vice President, Northwest Requirements Marketing.
		Vice President, Environment, Fish and Wildlife.
		Vice President for Engineering and Technical Services.
		Vice President, Planning and Asset Management.
		Executive Vice President, Corporate Strategy.
		Vice President, Transmission Marketing and Sales.
		Vice President, Bulk Marketing.
		Vice President for Generation Asset Management.
		Executive Vice President and Chief Financial Officer.
		Senior Vice President for Power Services.
		Vice President for Transmission Field Services.
		Senior Vice President, Transmission Services.
		Chief Operating Officer.
		Deputy Administrator.
		Vice President for Information Technology and Chief Information Officer.
		Vice President, Energy Efficiency.
		General Counsel/Executive Vice President.
	Southwestern Power Administration	Administrator, Southwestern Power Administration.
	Western Area Power Administration	Chief Financial Officer.
		Chief Operating Officer.
		Regional Manager, Upper Great Plains Region.
		Regional Manager, Rocky Mountain Region.
		Transmission Infrastructure Program Manager (2).
		Desert Southwest Regional Manager.
		Chief Information Officer.

Agency	Organization	Title
		Regional Manager, Sierra Nevada Region.
		General Counsel.
	Office of Enterprise Assessments	Deputy Director, Office of Independent Enterprise Assessments.
		Director, Office of Environment, Safety and Health Evaluation.
		Director, Office of Security Assessments.
	Office of Associate Under Secretary for Environment, Health, Safety and Security.	Director, Office of Environmental Protection Sustainability.
		Director, Office of Nuclear Safety.
		Director, Office of Field Assistance.
		Deputy Director, Office of Nuclear Safety.
		Senior Advisor.
DEPARTMENT OF ENERGY, OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Assistant Inspector General for Investigations.
		Assistant Inspector General for Audits and Administration.
		Deputy Inspector General for Investigations.
		Deputy Inspector General for Audits and Inspections.
		Assistant Inspector General, Management and Administration.
		Counsel to the Inspector General.
		Principal Deputy Inspector General.
ENVIRONMENTAL PROTECTION AGENCY.	Office of Executive Services	Director, Office of Executive Services.
	Office of the Chief Financial Officer	Deputy Chief Financial Officer.
		Associate Chief Financial Officer.
	Office of Planning, Analysis and Accountability.	Director, Office of Planning, Analysis and Accountability.
	Office of Budget	Director, Office of Budget.
	Office of the Controller	Director, Office of Financial Management.
	Office of Financial Services	Director, Office of Financial Services.
	Office of Technology Solutions	Director, Office of Technology Solutions.
	Office of Environmental Information	Director, Enterprise Information Technology Systems.
	Office of Policy and Resource Management.	Director, Office of Policy and Resource Management.
	Office of Administration	Director, Safety and Sustainability Division.
		Director, Office of Administration.
		Deputy Director, Office of Administration.
		Director, Facilities Management and Services Division.
	Office of Human Resources	Director, Executive Resources Division.
		Deputy Director, Office of Human Resources.
		Director, Office of Human Resources.
	Office of Acquisition Management	Deputy Director, Office of Acquisition Management.
		Director, Office of Acquisition Management.
	Office of Grants and Debarment	Director, Office of Grants and Debarment.
		Deputy Director, Office of Grants and Debarment.
	Office of Administration and Resources Management—Cincinnati Ohio.	Director, Office of Administration and Resources Management.
	Office of Administration and Resources Management—Research Triangle Park, North Carolina.	Director, Office of Administration and Resources Management.
	Office of Diversity, Advisory Committee Management and Outreach.	Director, Office of Diversity, Advisory Committee Management and Outreach.
	Environmental Appeals Board	Environmental Appeals Judge (4).
	Office of the Assistant Administrator for Enforcement and Compliance Assurance.	Senior Policy Director for Innovation and Next Generation Compliance.
	Federal Facilities Enforcement Office	Director, Federal Facilities Enforcement Office.
	Office of Environmental Justice	Director, Office of Environmental Justice.
	Office of Compliance	Director, Office of Compliance.
		Deputy Director, Office of Compliance.
		Director, Monitoring Assistance and Media Programs Division.
		Director, Enforcement Targeting and Data Division.
		Director, National Enforcement Training Institute.
	Office of Criminal Enforcement, Forensics and Training.	Deputy Director, Office of Criminal Enforcement, Forensics and Training.
		Director, Office of Criminal Enforcement, Forensics and Training.
		Director, Criminal Investigation Division.
		Director, National Enforcement Investigations Center.
	Office of Federal Activities	Director, International Compliance Assurance Division.
	Office of Civil Enforcement	Director, Office of Civil Enforcement.
		Deputy Director, Office of Civil Enforcement.
		Director, Air Enforcement Division.
	Office of Site Remediation Enforcement	Director, Office of Site Remediation Enforcement.
		Deputy Director, Office of Site Remediation Enforcement.

Agency	Organization	Title
	Office of Deputy General Counsel	Director, Resources Management Office.
	Office of Ground Water and Drinking Water.	Director, Drinking Water Protection Division.
		Director, Standards and Risk Management Division.
	Office of Science and Technology	Director, Standards and Health Protection Division.
		Director, Engineering and Analysis Division.
		Director, Health and Ecological Criteria Division.
	Office of Waste Water Management	Director, Municipal Support Division.
		Director, Water Permits Division.
	Office of Wetlands, Oceans and Watersheds.	Director, Oceans and Coastal Protection Division.
		Director, Assessment and Watershed Protection Division.
		Director, Wetlands Division.
	Office of Superfund Remediation and Technology Innovation.	Director, Technology Innovation and Field Services Division.
		Director, Resources Management Division.
		Director, Assessment and Remediation Division.
	Office of Resource Conservation and Recovery.	Director, Program Implementation and Information Division.
		Director, Materials Recovery and Waste Management Division.
		Director, Resource Conservation and Sustainability Division.
	Office of Air Quality Planning and Standards.	Associate Office Director for Program Integration and International Air Quality Issues.
		Director, Air Quality Assessment Division.
		Director, Health and Environmental Impacts Division.
		Director, Air Quality Policy Division.
		Director, Outreach and Information Division.
		Director, Sector Policies and Programs Division.
	Office of Transportation and Air Quality	Director, Compliance Division.
		Director, Assessment and Standards Division.
		Director, Transportation and Climate Division.
		Director, Testing and Advanced Technology Division.
	Office of Radiation and Indoor Air	Director, Indoor Environments Division.
		Director, Radiation Protection Division.
	Office of Atmospheric Programs	Director, Climate Change Division.
		Director, Clean Air Markets Division.
		Director, Climate Protection Partnership Division.
	Office of Program Management Operations.	Associate Assistant Administrator (Management).
	Office of Pesticide Programs	Director, Biological and Economic Analysis Division.
		Director, Bio pesticides and Pollution Prevention Division.
		Director, Anti-microbial Division.
		Director, Field and External Affairs Division.
		Director, Information Technology and Resources Management Division.
		Director, Health Effects Division.
		Director, Registration Division.
		Director, Environmental Fate and Effects Division.
		Director, Special Review and Registration Division.
	Office of Pollution Prevention and Toxics.	Director, Environmental Assistance Division.
		Director, Risk Assessment Division.
		Director, National Program Chemicals Division.
		Director, Chemical Control Division.
		Director, Information Management Division.
		Director, Chemistry, Economics and Sustainable Strategies Division.
	Office of the Assistant Administrator for Research and Development.	Deputy Director for Management, Office of Science Management.
		Director, Environmental Technology Innovation Cluster Program.
		Chief Innovation Officer.
		Director, Office of Science Information Management.
	Office of the Science Advisor	Director, Office of the Science Advisor.
	National Homeland Security Research Center.	Deputy Director for Management, National Homeland Security Research Center.
		Director, National Homeland Security Research Center.
	Office of Program Accountability and Resource Management.	Director, Office of Program Accountability and Resource Management.
	National Health and Environmental Effects Research Laboratory.	Associate Director for Ecology.
		Director, National Health and Environmental Effects Research Laboratory.
		Deputy Director for Management.
	Western Ecology Division	Director, Western Ecology Division.
	Gulf Ecology Division	Director, Gulf Ecology Division.
	Mid-Continent Ecology Division	Director, Mid-Continent Ecology Division.

Agency	Organization	Title
	National Exposure Research Laboratory (NERL).	Deputy Director for Management.
		Director, National Exposure Research Laboratory.
	National Risk Management Research Laboratory (NRMRL).	Deputy Director for Management.
		Director, National Risk Management Research Laboratory.
	Air Pollution Prevention and Control Division.	Director, Air Pollution Prevention and Control Division.
	National Center for Environmental Assessment.	Deputy Director for Management.
	National Center for Environmental Assessment—Washington, District of Columbia.	Director, National Center for Environmental Assessment.
	National Center for Environmental Assessment—Cincinnati, Ohio.	Director, National Center for Environmental Assessment.
	National Center for Environmental Research.	Deputy Director for Management.
	Office of Administrative and Research Support.	Director, Office of Administrative and Research Support.
		Deputy Director, Office of Administrative and Research Support.
	Region 1—Boston, Massachusetts	Assistant Regional Administrator for Administration and Resources Management.
		Director, Office of Site Remediation Restoration.
		Director, Office of Ecosystem Protection.
		Director, Office of Environmental Stewardship.
	Office of Regional Counsel	Regional Counsel (10).
	Region 2—New York, New York	Director, Clean Air and Sustainability Division.
		Director, Enforcement and Compliance Assistance Division.
		Assistant Regional Administrator for Policy and Management.
		Director, Office of Emergency and Remedial Response.
		Director, Division of Environmental Science and Assessment.
		Director, Caribbean Environmental Protection Division.
	Region 3—Philadelphia, Pennsylvania	Director, Hazardous Site Cleanup Division.
		Director, Water Protection Division.
		Assistant Regional Administrator for Policy and Management.
		Director, Air Protection Division.
		Director, Land and Chemicals Division.
		Director, Environmental Assessment and Innovation Division.
		Director, Chesapeake Bay Program Office.
	Region 4—Atlanta, Georgia	Director, Resource Conservation and Recovery Act Division.
		Director Water Division Region IV.
		Assistant Regional Administrator for Policy and Management.
		Director, Superfund Division.
		Director, Gulf of Mexico Program.
		Director, Science and Ecosystem Support Division.
		Director, Air, Pesticides and Toxics Management Division.
	Region 5—Chicago, Illinois	Director, Water Division.
		Director, Air and Radiation Division.
		Director, Great Lakes National Program Office.
		Director, Superfund Division.
		Assistant Regional Administrator for Resources Management.
		Director, Land and Chemicals Division.
	Region 6—Dallas, Texas	Assistant Regional Administrator for Management.
		Director, Multimedia Planning and Permitting Division.
		Director, Water Quality Protection Division.
		Director, Superfund Division.
		Director, Compliance Assurance and Enforcement Division.
	Region 7—Lenexa, Kansas	Director, Water, Wetlands and Pesticides Davison.
		Director, Air and Waste Management Division.
		Director, Environmental Services Division.
		Assistant Regional Administrator for Policy and Management.
		Director, Superfund Division.
	Region 8—Denver, Colorado	Assistant Regional Administrator for Technical and Management Services.
		Assistant Regional Administrator for Partnerships and Regulatory Assistance.
		Assistant Regional Administrator for Ecosystems Protection and Remediation.

Agency	Organization	Title
	Region 9—San Francisco, California	Director, Water Division.
		Director, Air Division.
		Director, Superfund Division.
		Director, Land Division.
		Director, Enforcement Division.
		Assistant Regional Administrator for Management and Technical Services.
	Region 10—Seattle, Washington	Director, Office of Air, Waste and Toxics.
		Director, Office of Compliance and Enforcement.
		Assistant Regional Administrator for Management Programs.
		Director, Office of Water and Watersheds.
		Director, Office of Environmental Cleanup.
		Director, Office of Ecosystems, Tribal and Public Affairs.
ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Assistant Inspector General for Mission Systems.
		Assistant Inspector General for Program Evaluation.
		Assistant Inspector General for Investigations.
		Chief of Staff.
		Counsel to the Inspector General.
		Deputy Inspector General.
		Assistant Inspector General for Audit.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.	Office of the Inspector General	Inspector General.
	Office of Field Programs	District Director (New York).
		District Director (Baltimore).
		Program Manager.
		District Director (Milwaukee).
		District Director (Houston).
		District Director (Atlanta).
		District Director (Detroit).
		National Systemic Investigations Executive Advisor.
		National Legal/Enforcement Executive Advisor.
		District Director (Philadelphia).
		District Director (Cleveland).
		National Mediation Executive Advisor.
		District Director (Charlotte).
		District Director (San Antonio).
		District Director (Phoenix).
		District Director (New Orleans).
		District Director (Birmingham).
		District Director (Denver).
		District Director (Los Angeles).
		District Director (Memphis).
		District Director (Indianapolis).
		District Director (Miami).
		District Director (St Louis).
		District Director (Chicago).
		District Director (Dallas).
		District Director (San Francisco).
	Field Management Programs	Director, Field Management Programs.
	Field Coordination Programs	Director, Field Coordination Programs.
FEDERAL COMMUNICATIONS COMMISSION.	Office of Inspector General	Inspector General.
	Media Bureau	Chief, Video Division.
FEDERAL ENERGY REGULATORY COMMISSION.	Office of Energy Projects	Director of Dam Safety and Inspection.
	Office of Administrative Litigation	Director, Legal Division.
		Director, Technical Division.
	Office of Enforcement	Chief Accountant and Director, Division of Financial Regulations.
FEDERAL LABOR RELATIONS AUTHORITY.	Office of the Chairman	Solicitor.
		Director, Policy and Performance Management.
		Chief Counsel.
		Senior Advisor.
	Office of Member	Chief Counsel (2).
	Federal Service Impasses Panel	Executive Director, Federal Service Impasses Panel.
	Office of the Inspector General	Inspector General.
	Office of the Executive Director	Executive Director.
	Office of the General Counsel	Deputy General Counsel (2).
	Office of General Counsel, Regional Offices.	Regional Director—Washington, District of Columbia.
		Regional Director—Boston.
		Regional Director—Atlanta.
		Regional Director—Dallas.
		Regional Director, Chicago Illinois.
		Regional Director, San Francisco.
		Regional Director, Denver.

Agency	Organization	Title
FEDERAL LABOR RELATIONS AUTHORITY OFFICE OF THE INSPECTOR GENERAL.	Office of Inspector General	Inspector General.
FEDERAL MARITIME COMMISSION	Office of the Secretary	Secretary.
	Office of Consumer Affairs and Dispute Resolution Services.	Director, Office of Consumer Affairs and Dispute Resolution Services.
	Office of the General Counsel	Deputy General Counsel for Reports Opinions and Decisions.
	Office of the Inspector General	Inspector General.
	Office of the Managing Director	Director, Strategic Planning and Regulatory Review.
		Deputy Managing Director.
	Bureau of Certification and Licensing	Director, Bureau of Certification and Licensing.
	Bureau of Trade Analysis	Director, Bureau of Trade Analysis.
	Bureau of Enforcement	Director, Bureau of Enforcement.
FEDERAL MEDIATION AND CONCILIATION SERVICE.	Office of the Director	Chief of Staff.
		National Representative.
	Office of the Deputy Director	Director of Field Operations.
FEDERAL RETIREMENT THRIFT INVESTMENT BOARD.	Office of the Director	Chief Financial Officer.
		Director, Office of Enterprise Planning.
		Director of Enterprise Risk Management.
		Chief Technology Officer.
		Director of Communications and Education.
		Director of Participant Operations and Policy.
		Chief Investment Officer.
		Chief Operating Officer.
		Deputy Chief Investment Officer.
		Senior Advisor for Uniformed Services.
		Director of Resource Management.
FEDERAL TRADE COMMISSION	Office of International Affairs	Deputy Director for International Consumer Protection.
	Office of Executive Director	Chief Information Officer.
		Deputy Executive Director.
	Bureau of Competition	Deputy Director, Bureau of Competition.
FEDERAL TRADE COMMISSION OFFICE OF THE INSPECTOR GENERAL.	Federal Trade Commission Office of the Inspector General.	Inspector General.
GENERAL SERVICES ADMINISTRATION.	Office of the Administrator	Director, Presidential Transition.
	Office of Mission Assurance	Associate Administrator for Mission Assurance.
	Office of Administrative Services	Deputy Chief Administrative Services Officer.
	Office of Citizen Services, Innovative Technologies and 18F.	Director Federal Citizen Information Center.
	Office of Human Resources Management.	Chief Human Capital Officer.
		Director of Human Capital Management.
		Director of Human Resources Services.
	Office of Governmentwide Policy	Deputy Associate Administrator for Information, Integrity and Access.
		Director of General Services Acquisition Policy, Integrity and Workforce.
		Director of Federal High-Performance Green Buildings.
		Director of the Federal Acquisition Institute.
		Principal Deputy for Asset and Transportation Management.
		Deputy Associate Administrator for Travel, Transportation and Asset Management.
		Director of Governmentwide Acquisition Policy.
		Deputy Chief Acquisition Officer and Senior Procurement Executive.
	Office of the Chief Financial Officer	Director of Regional Financial Services.
		Director of Financial Management.
		Director of Budget.
		Chief Financial Officer.
		Director of Federal Acquisition Service Financial Services.
		Deputy Chief Financial Officer.
	Public Buildings Service	Assistant Commissioner for Leasing.
		Assistant Commissioner for Facilities Management and Services Programs.
		Assistant Commissioner for Acquisition Management.
		Assistant Commissioner for Project Delivery.
		Assistant Commissioner for Client Solutions.
		Assistant Commissioner for Real Property Asset Management.
		Assistant Commissioner for Real Property Utilization and Disposal.

Agency	Organization	Title
	Office of General Services Administration, Information Technology.	Associate Chief Information Officer for Enterprise Infrastructure.
		Associate Chief Information Officer for Enterprise Planning and Governance.
		Associate Chief Information Officer for Acquisition Information Technology Services.
		Senior Agency Information Security Officer.
		Associate Chief Information Officer for Governmentwide and Enterprise Solutions.
		Associate Chief Information Officer for Public Buildings Information Technology Services.
		Associate Chief Information Officer for Financial and Human Resources Information Technology Services.
	Federal Acquisition Service	Program Executive for Expanded Contracting Services.
		Director of Strategic Programs.
		Assistant Commissioner for Integrated Award Environment.
		Director of Acquisition Operations.
		Director of Information Technology Schedule Programs.
		Assistant Commissioner for Strategy Management.
		Director of Motor Vehicle Management.
		Director of Supply Operations.
		Deputy Assistant Commissioner for General Supplies and Services.
		Director of Travel and Transportation Services.
		Assistant Commissioner for Integrated Technology Services.
		Assistant Commissioner for Acquisition Management.
		Director of Network Services Programs.
		Assistant Commissioner for Customer Accounts and Research.
		Assistant Commissioner for Assisted Acquisition Services.
		Deputy Assistant Commissioner for Integrated Technology Services.
		Assistant Commissioner for General Supplies and Services.
		Assistant Commissioner for Travel, Motor Vehicle and Card Services.
	New England Region	Regional Commissioner for Public Buildings Service.
	Northeast and Caribbean Region	Principal Deputy Regional Commissioner for Public Buildings Service.
		Regional Commissioner for Federal Acquisition Service.
		Regional Commissioner for Public Buildings Service.
	Mid-Atlantic Region	Regional Commissioner for Federal Acquisition Service.
		Regional Commissioner for Public Buildings Service.
	National Capital Region	Director of Facilities Management and Services Programs.
		Director of Project Delivery.
		Director of Leasing.
		Principal Deputy Regional Commissioner for Public Buildings Service.
		Regional Commissioner for Federal Acquisition Service.
		Regional Commissioner for Public Buildings Service.
		Director of Portfolio Management.
	Southeast Sunbelt Region	Regional Commissioner for Federal Acquisition Service.
		Regional Commissioner for Public Buildings Service.
	Great Lakes Region	Regional Commissioner for Public Buildings Service.
		Regional Commissioner for Federal Acquisition Service.
	Heartland Region	Regional Commissioner for Federal Acquisition Service.
		Regional Commissioner for Public Buildings Service.
	Greater Southwest Region	Regional Commissioner for Federal Acquisition Service.
		Regional Commissioner for Public Buildings Service.
	Rocky Mountain Region	Regional Commissioner for Public Buildings Service.
		Regional Commissioner for Federal Acquisition Service, Region 8.
	Pacific Rim Region	Regional Commissioner for Public Buildings Service.
		Regional Commissioner, Federal Acquisition Service.
		Principal Deputy Regional Commissioner for Public Buildings Service.
	Northwest/Arctic Region	Regional Commissioner for Federal Acquisition Service, Region 10.
		Regional Commissioner for Public Buildings Service.
GENERAL SERVICES ADMINISTRATION, OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Counsel to the Inspector General.
		Deputy Assistant Inspector General for Acquisition Programs Audits.
		Principal Deputy Assistant Inspector General for Auditing.
		Assistant Inspector General for Auditing.

Agency	Organization	Title
		Assistant Inspector General for Investigations.
		Assistant Inspector General for Inspections.
		Associate Inspector General.
		Assistant Inspector General for Administration.
		Deputy Assistant Inspector General for Investigations.
		Deputy Inspector General.
GULF COAST ECOSYSTEM RESTORATION COUNCIL.	Gulf Coast Ecosystem Restoration Council.	Deputy Executive Director and Director of Programs.
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Security and Strategic Information.	Associate Director for Strategic Information.
		Associate Director for Personnel and Classified Information Security.
		Director, Intelligence and Counterintelligence.
	Office of the Assistant Secretary for Financial Resources.	Director, Office of Small and Disadvantaged Business Utilization.
	Office of the Deputy Assistant Secretary for Finance.	Deputy Assistant Secretary, Finance.
		Associate Deputy Assistant Secretary, Finance.
	Office of the Deputy Assistant Secretary for Information Resources Management.	Deputy Chief Information Officer.
	Office of the Assistant Secretary for Planning and Evaluation.	Associate Deputy Assistant Secretary for Planning and Evaluation (Health Services Policy).
	Office of the Assistant Secretary for Health.	Director, Office of Research Integrity.
	Associate General Counsel Divisions	Deputy Associate General Counsel for Claims and Employment Law.
		Deputy Associate General Counsel, Business and Administrative Law Division.
		Associate General Counsel, General Law Division.
	Office of the Inspector General	Deputy Inspector General for Management and Policy.
		Deputy Inspector General for Legal Affairs.
		Principal Deputy Inspector General.
	Office of the Deputy Inspector General for Investigations.	Assistant Inspector General for Investigative Operations.
		Assistant Inspector General for Investigations (2).
		Deputy Inspector General for Investigations.
	Office of the Deputy Inspector General for Audit Services.	Assistant Inspector General for Grants and Internal Activities.
		Assistant Inspector General for Medicare and Medicaid Service Audits.
		Assistant Inspector General for Financial Management and Regional Operations.
		Deputy Inspector General for Audit Services.
		Assistant Inspector General for Audit Management and Policy.
	Office of the Deputy Inspector General for Evaluation and Inspections.	Deputy Inspector General for Evaluation and Inspections.
	Program Support Center	Director, Information Systems Management Service.
		Deputy Assistant Secretary for Program Support.
	Office of Financial Management Service.	Director, Financial Management Service.
	Office of Program Support	Director, Office of Financial Management.
	Office of the Actuary	Director, Office of the Actuary (Chief Actuary).
		Director, Medicare and Medicaid Cost Estimates Group.
		Director, Parts C and D Actuarial Group.
		Director, National Health Statistics Group.
	Center for Medicare	Director, Medicare Contractor Management Group.
	Center for Program Integrity	Director, Medicaid Integrity Group.
	Office of Acquisitions and Grants Management.	Deputy Director, Office of Acquisition and Grants Management.
		Director, Office of Acquisitions and Grants Management.
	Office of Technology Solutions	Deputy Director, Office of Technology Solutions (2).
		Director, Office of Technology Solutions.
	Office of Financial Management	Deputy Director, Office of Financial Management.
		Director, Office of Financial Management.
		Director, Financial Services Group.
		Director, Accounting Management Group.
	Office of Policy, Planning, and Budget	Associate Administrator for Policy and Programs Coordinator.
	Center for Mental Health Services	Director, Division of State and Community Systems Development.
		Director, Center for Mental Health Services.
	Centers for Disease Control and Prevention.	Director, Centers for Disease Control and Prevention, Washington Office.
		Director, Procurement and Grants Office.
		Chief Learning Officer.

Agency	Organization	Title
		Issues Analysis and Coordination Officer.
		Deputy Director, Center for Global Health.
		Director, Information Technology Services Office.
		Director, Center for Global Health (2).
		Director, Buildings and Facilities Office.
		Deputy Director Center for Global Health.
		Chief Financial Officer.
	National Institute for Occupational Safety and Health.	Deputy Director for Management.
	Office of the Commissioner	Assistant Commissioner for Global Regulatory Operations.
	Office of Chief Counsel	Associate Deputy Chief Counsel for Drugs and Biologics.
		Deputy Chief Counsel for Program Review.
		Associate Deputy Chief Counsel for Devices, Foods and Veterinary Medicine.
	Office of Management	Director, Office of Acquisitions and Grants Services.
	Office of Regulatory Affairs	Deputy Director for Investigations.
		Associate Director, Investigations.
		Director, Office of Criminal Investigations.
		Regional Food and Drug Director, Northeast Region.
		Deputy Associate Commissioner for Regulatory Affairs.
		Associate Commissioner for Regulatory Affairs.
		District Food and Drug Director, Los Angeles District.
	Center for Biologics Evaluation and Research.	Director, Office of Compliance and Biologics Quality.
		Associate Director for Compliance and Biologic Quality.
	Center for Drug Evaluation and Research.	Director, Office of New Drug Quality Assessment.
		Director, Office of Compliance.
		Senior Advisor for Policy.
		Associate Director for Management.
		Director, Division of Medical Imaging Surgical and Dental Products.
		Director, Office of Generic Drugs.
		Director, Office of Epidemiology and Biostatistics.
	Center for Devices and Radiological Health.	Director, Office of System and Management.
		Director, Office of Compliance.
		Director, Office of Science and Technology.
		Director, Office of Device Evaluation.
	Center for Food Safety and Applied Nutrition.	Director, Office of Premarket Approval.
		Director, Office of Field Programs.
		Director, Office of Plant and Dairy Foods and Beverages.
		Director, Office of Regulations and Policy.
		Director, Office of Seafood.
	Center for Veterinary Medicine	Director, Office of Science.
		Director, Office of Surveillance and Compliance.
	Office of Operations	Director, Office of Safety, Security and Crisis Management.
		Director, Office of Technology and Delivery.
		Director, Office of Business and Customer Assurance.
		Chief Financial Officer.
		Director, Office of Budget.
		Director, Office of Human Resources.
	Health Resources and Services Administration Office of the Administrator.	Deputy Associate Administrator, Office of Federal Assistance Management.
	Special Programs Bureau	Associate Administrator, Special Programs Bureau.
	Human Immunodefiency Virus Infection/Acquired Immune Deficiency Syndrome (HIV/AIDS) Bureau.	Director, Office of Science and Epidemiology.
	Indian Health Service	Director, Office of Environmental Health and Engineering.
	National Institutes of Health	Director, Office of Research Information Systems.
		Associate Director for Administrative Management.
		Director, Office of Acquisition and Logistics Management.
		Associate Director for Management.
	Office of the Director	Director, Office of Policy for Extramural Research Administration.
		Director, Office of Financial Management.
		Director, Office of Research Facilities Development and Operations.
		Associate Director for Security and Emergency Response.
		Senior Policy Officer (Ethics).
		Director, Office of Strategic Planning for Administration.
		Director, Office of Strategic Planning and Management Operations.
	National Heart, Lung and Blood Institute.	Director, Office of Health Education, Communications, and Science Policy.
	National Cancer Institute	Deputy Director for Management.

Agency	Organization	Title
	National Institute of Diabetes and Digestive and Kidney Diseases.	Associate Director for Management.
	National Institute of Arthritis and Musculoskeletal and Skin Diseases.	Associate Director for Management and Operations.
	National Library of Medicine	Director, Information Systems.
		Deputy Director, National Library of Medicine.
		Associate Director for Extramural Programs.
		Associate Director for Library Operations.
	National Institutes of Allergy and Infectious Diseases.	Head, Lymphocyte Biology Section.
		Director, Office of Communications and Government Relations.
	National Institute on Aging	Director of Management.
	National Institutes of Child Health and Human Development.	Associate Director for Administration.
		Director, National Center for Medical Rehabilitation Research.
	National Institute of Dental and Craniofacial Research.	Associate Director for Management (2).
	National Institutes on Deafness and Other Communication Disorders.	Associate Director for Administration.
	National Institutes of Health Clinical Center.	Chief Financial Officer.
		Chief Operating Officer.
	Center for Information Technology	Director, Division of Computer System Services.
		Director, Center for Information Technology and Chief Information Officer.
	National Human Genome Research Institute.	Director, Office of Population Genomics.
		Associate Director for Management.
	National Institute on Drug Abuse	Associate Director for Management.
	National Center for Advancing Translational Sciences.	Associate Director for Administration.
	National Institute on Alcohol Abuse and Alcoholism.	Associate Director for Administration.
	Agency for Healthcare Research and Quality.	Executive Officer.
DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Principal Deputy Inspector General.
	Office of Counsel to the Inspector General.	Assistant Inspector General for Legal Affairs.
		Chief Counsel to the Inspector General.
	Office of Audit Services	Assistant Inspector General for Audit Services.
		Assistant Inspector General for Financial Management and Regional Operations.
		Assistant Inspector General for Medicare and Medicaid Service Audits.
		Deputy Inspector General for Audit Services.
	Office of Evaluation and Inspections	Assistant Inspector General for Evaluation and Inspections.
		Deputy Inspector General for Evaluation and Inspections.
		Assistant Inspector General for Evaluation and Inspections.
	Office of Investigations	Assistant Inspector General for Investigations (3).
		Deputy Inspector General for Investigations.
	Office of Management and Policy	Assistant Inspector General (Chief Data Officer).
		Assistant Inspector General for Information Technology (Chief Information Officer).
		Assistant Inspector General for Management and Policy.
		Deputy Inspector General for Management and Policy.
DEPARTMENT OF HOMELAND SECURITY.	Office of the Secretary	Director, Office of Community Partnerships.
		Senior Department of Homeland Security Advisor to the Commander, United States Northern Command/North American Aerospace Defense Command.
		Department of Homeland Security (Department of Homeland Security) Advisor to the Department of Defense (Department of Defense).
	Office of the Executive Secretariat	Deputy Executive Secretary, Operations and Administration.
	Office of the General Counsel	Deputy Associate General Counsel for Acquisition and Procurement.
		Associate General Counsel for Ethics.
		Deputy Associate General Counsel for General Law.
	Office for Civil Rights and Civil Liberties	Deputy Civil Rights and Civil Liberties Officer, Equal Employment Opportunity and Diversity Director.
		Deputy Civil Rights and Civil Liberties Officer, Programs and Compliance.
		Director Civil Rights and Civil Liberties Programs Division.
	Domestic Nuclear Detection Office	Assistant Director, Operations Support Directorate.
		Deputy Director.
		Assistant Director, Transformational and Applied Research Directorate.

Agency	Organization	Title
		Assistant Director, Product Acquisition and Deployment Directorate.
		Assistant Director, Architecture and Plans Directorate.
		Assistant Director, National Technical Nuclear Forensics Center.
		Chief of Staff.
	Office of the Assistant Secretary for Policy.	Deputy Assistant Secretary for Unity of Effort Integration.
		Deputy Assistant Secretary for Immigration Statistics.
		Department of Homeland Security (DHS) Attaché to Central America.
		Deputy Assistant Secretary for Cyber Policy.
	United States Citizenship and Immigration Services.	Chief, Office of Contracting.
		Chief Technology Officer.
		Deputy Chief Information Officer for Operations.
		Chief, Office of Legislative Affairs.
		Deputy Director, Site 3.
		Deputy Director, Service Center, Site 5.
		Director, Service Center, Site 5.
		Director, Potomac Service Center.
		Deputy Director, Potomac Service Center.
		Chief, Immigrant Investor Program.
		Deputy Associate Director, Service Center Operations.
		Associate Director, Customer Service and Public Engagement.
		Deputy Chief Counsel for Field Management.
		Chief, Office of Transformation Coordination.
		Deputy Associate Director, Office of Management.
		Deputy Chief, Office of Transformation Coordination.
		District Director, Field Services, Chicago, Illinois.
		District Director, Field Services, Boston, Massachusetts.
		Chief, Verification Division.
		Chief, Administrative Appeals.
		Associate Director, Field Operations.
		Deputy Director, Service Center, Saint Albans, Vermont.
		Deputy Director, Service Center, Lincoln, Nebraska.
		Chief, International Operations.
		Deputy Director, Service Center, Dallas, Texas.
		Deputy Director, Service Center, Laguna Niguel, California.
		Director, National Records Center.
		Deputy Director, National Benefits Center.
		Associate Director, Service Center Operations.
		Deputy Associate Director, Refugee, Asylum, and International Operations.
		Associate Director, Enterprise Services Division.
		Chief, Office of Security and Integrity.
		District Director, Field Services, Atlanta, Georgia.
		District Director, Field Services, Newark, New Jersey.
		District Director, Field Services, Tampa, Florida.
		Regional Director, Southeast Region.
		District Director, Field Services, San Francisco, California.
		District Director, Field Services, Los Angeles, California.
		Director, National Benefits Center.
		Chief, Office of Administration.
		District Director, Field Services, Miami, Florida.
		Chief Financial Officer.
		Northeast Regional Director, Burlington, Vermont.
		Western Regional Director, Laguna Niguel, California.
		Central Regional Director, Dallas, Texas.
		Director, Vermont Service Center, Saint Albans, Vermont.
		Director, Service Center, Dallas, Texas.
		Director, Service Center, Laguna Niguel, California.
		Director, Service Center, Lincoln, Nebraska.
		Associate Director, Office of Management.
		Chief Information Officer.
		Chief, Performance and Quality.
		Director, Office of Refugee Affairs.
		Deputy Associate Director, Office of Field Operations.
		Deputy Associate Director, Customer Service and Public Engagement.
		Associate Director, Fraud Detection and National Security.
		Chief, Intake and Document Production.
		Deputy Associate Director, Fraud Detection and National Security.

Agency	Organization	Title
		Associate Director, Refugee, Asylum and International Operations.
		Deputy General Counsel.
		Deputy Chief Information Officer.
		Deputy Associate Director, Enterprise Services Division.
		District Director, Field Services, New York, New York.
		Chief, Asylum Division.
		Chief, Human Capital and Training.
	United States Secret Service	Deputy Assistant Director, Office of Government and Public Affairs.
		Chief Financial Officer.
		Deputy Assistant Director, Office of Protective Operations.
		Deputy Assistant Director, Office of Investigations.
		Special Agent In Charge, Philadelphia Field Office.
		Deputy Assistant Director, Office of Protective Operations.
		Special Agent In Charge, Chicago Field Office.
		Deputy Assistant Director, Technical Development and Mission Support.
		Deputy Assistant Director, Office of Investigations.
		Special Agent In Charge, Los Angeles Field Office.
		Component Acquisition Executive.
		Special Agent In Charge, Washington Field Office.
		Deputy Chief Financial Officer.
		Deputy Assistant Director, Special Operations Division.
		Special Agent In Charge, Special Services Division.
		Special Agent In Charge, Newark.
		Deputy Special Agent In Charge, New York Field Office.
		Special Agent In Charge, Honolulu Field Office.
		Special Agent In Charge, Atlanta Field Office.
		Deputy Special Agent In Charge, Vice Presidential Protective Division.
		Chief Information Officer.
		Deputy Special Agent In Charge (White House Complex).
		Deputy Assistant Director, Technical Development and Mission Support.
		Deputy Assistant Director, Office of Training.
		Special Agent In Charge, Houston Field Office.
		Deputy Assistant Director, Office of Investigations.
		Chief, Office of Strategic Planning and Policy.
		Deputy Special Agent In Charge, Presidential Protective Division.
		Deputy Assistant Director, Office of Strategic Planning and Policy.
		Special Agent In Charge (Dignitary Protective Division).
		Deputy Assistant Director, Office of Human Resources.
		Special Agent In Charge, Dallas Field Office.
		Special Agent In Charge, San Francisco Field Office.
		Chief Counsel.
		Special Agent In Charge, Technical Security Division.
		Special Agent In Charge, Vice Presidential Protective Division.
		Assistant Director, Office of Human Resources.
		Special Agent In Charge, New York Field Office.
		Special Agent In Charge, Presidential Protective Division.
		Assistant Director, Office of Professional Responsibility.
		Assistant Director, Office of Administration.
		Assistant Director, Office of Technical Development and Mission Support.
		Assistant Director, Protective Operations.
		Assistant Director, Investigations.
		Deputy Chief Information Officer.
		Deputy Director, United States Secret Service.
		Deputy Special Agent In Charge for Cyber Security.
		Director, United States Secret Service.
		Director of Communications (Media Affairs).
		Chief Operating Officer.
		Assistant Director, Office of Training.
		Deputy Assistant Director, Office of Protective Operations.
		Deputy Assistant Director, Technical Development and Support Mission.
		Deputy Chief Counsel/Principal Ethics Official.
		Special Agent In Charge, Miami Field Office.
		Special Agent In Charge, Paris Field Office.
		Deputy Assistant Director, Office of Human Resources.

Agency	Organization	Title
		Deputy Assistant Director, Strategic Intelligence and Information.
		Assistant Director, Office of Strategic Intelligence and Information.
		Assistant Director, Office of Government and Public Affairs.
		Special Agent In Charge, Protective Intelligence and Assessment Division.
		Special Agent In Charge, Rome Field Office.
		Special Agent In Charge, Rowley Training Center.
		Special Agent In Charge, Criminal Investigative Division.
		Chief of Staff.
	United States Coast Guard	Director of Financial Operations/Comptroller.
		Deputy Assistant Commandant for Command, Control, Communications, Computers, and Information Technology/Deputy Chief Information Officer.
		Director, Incident Management and Preparedness Policy.
		Director of Financial Operations/Comptroller.
		Director of Financial Management and Procurement Services Modernization.
		Director, National Pollution Funds Center.
		Deputy Assistant Commandant for Acquisition/Director of Acquisition Services.
		Head of Contracting Activity.
		Director, Coast Guard Investigative Service.
		Director, Marine Transportation System Management.
		Chief Procurement Law Counsel and Chief Trial Attorney.
		Deputy Assistant Commandant for Resources and Deputy Chief Financial Officer.
		Assistant Deputy Commandant for Mission Support.
		Deputy Assistant Commandant for Intelligence and Criminal Investigations.
	Office of the Under Secretary for National Protection and Programs Directorate.	Director, Human Resources Management.
		Director, Office of Compliance and Security.
		Chief Technology Officer, Office of Biometric Identity Management.
		Director of Operations, National Cybersecurity and Communications Integration Center.
		Director, Network Security Deployment.
		Deputy Director, National Cybersecurity and Communications Integration Center.
		Assistant Director of Field Operations (Central), Federal Protective Services.
		Assistant Director of Field Operations (West), Federal Protective Services.
		Assistant Director of Operations, Federal Protective Services.
		Senior Counselor to the Under Secretary for National Protection and Programs Directorate.
		Deputy Director, Office of Emergency Communications.
		Director, Stakeholder Engagement and Cyber Infrastructure Resilience Division.
		Director, Office of Cyber and Infrastructure Analysis.
		Deputy Director, National Cybersecurity Center.
		National Protection and Programs Directorate (NPPD) Chief Information Officer.
		Deputy Director, Infrastructure Security Compliance.
		Director, Infrastructure Security Compliance.
		Director, Sector Outreach and Programs Division.
		Assistant Director for Field Operations (East), Federal Protective Service.
		Director of Management.
		Director, Office of Emergency Communications.
		Deputy Director, Office of Biometric Identity Management.
		Director, Federal Network Resilience.
		Director, Protective Security Coordination.
		Director, Federal Protective Service.
		Senior Advisor, Office of Infrastructure Protection.
		Assistant Director, Identity Capabilities Management Division, Office of Biometric Identity Management.
		Component Acquisition Executive.
		Chief Financial Officer.
		Assistant Director of Risk Management, Federal Protective Service.
		Assistant Director of Risk Management.

Agency	Organization	Title
		Director, Strategy and Policy/Cybersecurity Coordination.
		Assistant Director, Office of Training and Career Development, Federal Protective Service.
		Assistant Director, Office of Resource Management, Federal Protective Service.
		Director, Enterprise Performance Management.
		Deputy Assistant Secretary for Infrastructure Protection.
		Chief Technology Officer, Cybersecurity and Communications.
	Office of the Under Secretary for Intelligence and Analysis.	Director, Border Security Division.
		Director, Information Sharing and Intelligence Enterprise Management Division.
		Director, Border Intelligence Fusion Section.
		Director, Cyber Infrastructure and Science Division.
		Deputy Director, Office of Enterprise and Mission Support.
		Director, Operations, State and Local Program Office.
		Principal Deputy Director, Terrorist Screening Center.
		Director, Collection Requirements Division.
		Chief of Staff.
		Director, Mission Support Division.
		Deputy Director, Office of Analysis.
	Assistant Secretary for Health Affairs and Chief Medical Officer.	Deputy Assistant Secretary for Health Threats Resilience.
		Deputy Director, Workforce Health and Medical Support.
		Deputy Director, Health Threats Resilience.
		Deputy Assistant Secretary.
		Principal Deputy Assistant Secretary for Health Affairs/Deputy Chief Medical Officer.
	United States Immigration and Customs Enforcement.	Director, Labor Relations/Employee Relations.
		Component Acquisition Executive.
		Director, Facilities and Asset Administration.
		Director, Federal Export Enforcement Coordination Center.
		Special Agent In Charge, San Juan, Puerto Rico.
		Special Agent In Charge, Buffalo, New York.
		Special Agent In Charge, Philadelphia, Pennsylvania.
		Special Agent In Charge, Boston, Massachusetts.
		Special Agent In Charge, Newark, New Jersey.
		Special Agent In Charge, Tampa, Florida.
		Special Agent In Charge, Saint Paul, Minnesota.
		Field Office Director, Office of Enforcement and Removal Operations, New York City, New York.
		Field Office Director, Office of Enforcement and Removal Operations, Los Angeles, California.
		Field Office Director, Office of Enforcement and Removal Operations, Phoenix, Arizona.
		Deputy Assistant Director, Domestic Operations.
		Assistant Director for Detention Oversight and Inspections.
		Director, Joint Task Force—Investigations.
		Chief Counsel for Los Angeles.
		Chief Counsel for Miami.
		Field Office Director, Office of Enforcement and Removal, New Orleans, Louisiana.
		Field Office Director, Office of Enforcement and Removal Operations, Miami, Florida.
		Assistant Director, Homeland Security Investigative Programs.
		Special Agent In Charge, Denver.
		Assistant Director, Homeland Security Investigations (Intellectual Property Rights Center).
		Field Office Director, Office of Enforcement and Removal, Houston, Texas.
		Field Office Director, Office of Enforcement and Removal, Chicago, Illinois.
		Field Office Director, Office of Enforcement and Removal, Atlanta, Georgia.
		Field Office Director, Office of Enforcement and Removal, El Paso, Texas.
		Assistant Director, Enforcement and Removal Operations, Law Enforcement Systems and Analysis Division.
		Deputy Chief Information Officer.
		Special Agent In Charge, Detroit.
		Executive Director, Law Enforcement Information Sharing Initiative.
		Deputy Assistant Director, Office of Enforcement and Removal Operations, Field Operations.

Agency	Organization	Title
		Assistant Director, Office of Investigations (Domestic Operations). Deputy Assistant Director, Homeland Security Investigative Services. Deputy Director, Enforcement and Removal Operations. Deputy Principal Legal Advisor for Headquarters. Deputy Principal Legal Advisor for Field Operations. Chief Counsel, New York. Deputy Director, Medical Affairs, Office of Enforcement and Removal Operations. Assistant Director, Enforcement and Removal Operations, Custody Operations Division. Assistant Director, Operations Support, Office of Enforcement and Removal Operations. Field Office Director, Office of Enforcement and Removal Operations, San Antonio, Texas. Field Office Director, Office of Enforcement and Removal Operations, San Diego, California. Director, Office of Training and Development. Division Director for Investigations, Office of Professional Responsibility. Deputy Assistant Director, Office of Professional Responsibility. Assistant Director, Information Governance. Assistant Director, Enforcement and Removal Operations, Field Operations. Deputy Chief Financial Officer. Deputy Director, International Affairs. Special Agent In Charge, Washington, District of Columbia. Special Agent In Charge, Atlanta. Director, Financial Management. Assistant Director, Enforcement and Removal Operations, Repatriation Division. Chief Financial Officer. Director, Office of Procurement. Assistant Director for Secure Communities and Enforcement, Office of Enforcement and Removal Operations. Executive Director, Management and Administration. Deputy Director, International Criminal Police Organization (Interpol). Chief Information Officer. Director, Budget and Program Performance. Deputy Assistant Director, Critical Infrastructure, Protection, and Fraud. Assistant Director, Diversity and Civil Rights. Deputy Director, Joint Task Force East—Operations. Deputy Assistant Secretary for Immigration and Customs Enforcement. Assistant Director, Human Resources Management. Deputy Principal Legal Advisor. Director, Office of Homeland Security Investigations. Deputy Director, Office of Homeland Security Investigations. Special Agent In Charge (New York). Deputy Assistant Director (National Security Investigations). Special Agent In Charge, Miami. Special Agent In Charge, San Francisco. Special Agent In Charge, Dallas. Assistant Director, Office of Professional Responsibility. Special Agent In Charge, San Diego. Special Agent In Charge, San Antonio. Special Agent In Charge, New Orleans. Special Agent In Charge, Los Angeles. Special Agent In Charge, Houston. Special Agent In Charge, Chicago. Director, Intelligence, Homeland Security Investigations. Director, International Affairs. Deputy Assistant Director (Financial, Narcotics and Public Safety). Special Agent In Charge, Seattle. Director, Office of Enforcement and Removal Operations. Director of Enforcement and Litigation. Deputy Assistant Director, Mission Support. Senior Policy Administrator, Brussels.

Agency	Organization	Title
		Field Office Director, Office of Enforcement and Removal Operations, Philadelphia, Pennsylvania.
		Field Office Director, Office of Enforcement and Removal, Seattle.
		Deputy Director, Joint Task Force West—Operations.
		Special Agent In Charge, El Paso.
		Special Agent In Charge, Phoenix.
		Chief Counsel, San Antonio.
		Chief Counsel, Chicago, Immigration, Customs and Enforcement.
	United States Customs and Border Protection.	Executive Director, Planning, Program Analysis and Evaluation.
		Port Director, John F. Kennedy Airport.
		Deputy Chief Patrol Agent, El Paso.
		Assistant Commissioner, Technology Innovation and Acquisition.
		Deputy Chief Patrol Agent, Rio Grande Valley.
		Port Director, Los Angeles/Long Beach Seaport.
		Chief Patrol Agent, Tucson.
		Executive Director, Customs and Border Protection Basic Training.
		Executive Director, Procurement.
		Assistant Commissioner, Administration.
		Executive Director, Mission Support.
		Executive Director, Agriculture Programs and Trade Liaison.
		Port Director, Los Angeles Airport.
		Director, Field Operations, Boston.
		Director, Field Operations, Tucson.
		Port Director, San Francisco.
		Executive Director, National Targeting Center.
		Deputy Assistant Commissioner, International Trade.
		Assistant Commissioner, Internal Affairs.
		Director, Field Operations, San Juan.
		Associate Chief Counsel, Los Angeles.
		Associate Chief Counsel, Houston.
		Associate Chief Counsel, Chicago.
		Associate Chief Counsel, New York.
		Associate Chief Counsel, Southeast.
		Associate Chief Counsel for Ethics, Labor, and Employment.
		Associate Chief Counsel, Trade and Finance.
		Associate Chief Counsel, Enforcement.
		Director, Field Operations, El Paso.
		Chief Patrol Agent, San Diego.
		Chief Patrol Agent, El Paso.
		Director, Field Operations, San Francisco.
		Chief Patrol Agent, Laredo.
		Chief (Executive Assistant Commissioner), United States Border Patrol.
		Deputy Assistant Commissioner, Air and Marine.
		Director, Field Operations, San Diego.
		Director, Field Operations, Laredo.
		Director, Field Operations, Houston.
		Director, Field Operations, Los Angeles.
		Director, Field Operations, Chicago.
		Director, Field Operations, Miami.
		Port Director, Miami International Airport.
		Port Director, Newark.
		Chief Accountability Officer.
		Director, Field Operations, New York.
		Deputy Assistant Commissioner, Office of Training and Development.
		Director, Field Operations, Buffalo.
		Director, Field Operations, Detroit.
		Director, Field Operations, Seattle.
		Executive Director, Operations.
		Deputy Chief, Border Patrol.
		Deputy Assistant Commissioner, Field Operations.
		Assistant Commissioner, Field Operations.
		Executive Director, Laboratories and Scientific Services.
		Assistant Commissioner, Information and Technology.
		Deputy Director, Procurement.
		Executive Director, Budget.

Agency	Organization	Title
		Chief Financial Officer.
		Executive Director, Regulations and Rulings.
		Executive Director, Regulatory Audit.
		Assistant Commissioner, Office of International Trade.
		Assistant Commissioner, Training and Development.
		Executive Director, Facilities Management and Engineering.
		Executive Director, Labor and Employee Relations.
		Deputy Assistant Commissioner, Human Resources Management.
		Assistant Commissioner, Human Resources Management.
		Deputy Commissioner.
		Deputy Chief Counsel.
		Executive Director, Investigative Operations.
		Executive Director, Program.
		Director, Counter Network.
		Deputy Joint Field Commander, East.
		Director, National Targeting Center (Cargo).
		Director, Leadership Development Center.
		Director, Joint Task Force, West Commander, Laredo, Texas.
		Senior Advisor.
		Executive Director, National Programs.
		Executive Director, Privacy and Diversity.
		Assistant Commissioner, International Affairs.
		Director, National Targeting Center (Passenger).
		Executive Director, Programming.
		Deputy Joint Field Commander, Arizona, Joint Operations Directorate.
		Joint Field Commander, Arizona, Joint Operations Directorate.
		Assistant Commissioner, Office of Intelligence.
		Executive Director, Automated Commercial Environment (ACE) Business Office.
		Executive Director, Acquisition Management.
		Executive Director, Joint Operations Directorate.
		Director, Field Operations (Preclearance).
		Deputy Assistant Commissioner, International Affairs.
		Port Director, San Ysidro.
		Deputy Chief Patrol Agent, Tucson.
		Chief Patrol Agent, El Centro, California.
		Deputy Chief Patrol Agent, San Diego.
		Executive Director, Program Management Office.
		Director of Operations, Northern Region, Detroit, Office of Customs and Border Protection (CBP) Air and Marine.
		Director of Operations, Southeastern Region, Miami, Florida, Office of Customs and Border Protection (CBP) Air and Marine.
		Director, Air and Marine Operations Center, Riverside, Office of Customs and Border Protection (CBP) Air and Marine.
		Executive Director, Intelligence and Targeting.
		Director of Operations, Southwest Border, Albuquerque, New Mexico, Office of Customs and Border Protection (CBP) Air and Marine.
		Executive Director, Passenger Systems Program Office.
		Executive Director, National Air Security Operations, Office of Customs and Border Protection (CBP) Air and Marine.
		Executive Director, Training, Safety and Standards.
		Executive Director, Human Resources Operations, Programs and Policy.
		Executive Director, Commercial Targeting and Enforcement.
		Executive Director, Financial Operations.
		Port Director, Laredo.
		Deputy Assistant Commissioner, Office of Intelligence.
		Chief, Strategic Planning and Analyses.
		Director of Operations, Air and Marine.
		Executive Director, Trade Policy and Programs.
		Deputy Assistant Commissioner, Technology Innovation and Acquisition.
		Executive Director, Mission Support, Office of Customs and Border Protection (CBP) Air and Marine.
		Deputy Chief, Law Enforcement Operations, Office of Border Patrol.

Agency	Organization	Title
		Deputy Assistant Commissioner, Internal Affairs.
		Executive Director, Enterprise Data Management and Engineering.
		Executive Director, Targeting and Analysis Systems.
		Executive Director, Field Support.
		Executive Director, Cargo Systems.
		Deputy Chief, Operational Programs, Office of Border Patrol.
		Chief Patrol Agent, Yuma, Arizona.
		Executive Director, Admissibility and Passenger Programs.
		Chief Patrol Agent, Del Rio.
		Assistant Commissioner, Air and Marine.
		Deputy Director, Policy and Planning.
		Executive Director, Cargo and Conveyance Security.
		Director, Field Operations, Atlanta.
		Chief, Law Enforcement Operations, Office of Border Patrol.
		Executive Director, Enterprise Networks and Technology Support.
		Executive Director, Mission Readiness Operations Directorate.
		Chief Patrol Agent, Rio Grande Valley.
		Deputy Assistant Commissioner, Information and Technology.
		Port Director, El Paso.
	Federal Law Enforcement Training Center.	Assistant Director (Policy and Strategy).
		Assistant Director (Mission and Readiness Support Directorate).
		Assistant Director (Chief Financial Officer).
		Assistant Director (Washington Operations).
		Assistant Director (Regional and International Training Directorate).
		Director, Federal Law Enforcement Training Center.
		Chief Counsel.
		Assistant Director (Glynco Training Directorate).
		Assistant Director (Centralized Training Management Directorate).
		Deputy Director, Federal Law Enforcement Training Center.
		Assistant Director (Chief Information Officer Directorate).
	Federal Emergency Management Agency.	Deputy Regional Administrator (Region II New York).
		Deputy Regional Administrator (Region I, Boston).
		Deputy Regional Administrator, Region VI, Denton.
		Deputy Assistant Administrator, National Preparedness Directorate.
		Deputy Regional Administrator, Region IV, Atlanta.
		Chief Learning Officer.
		Deputy Principal Legal Advisor for Management.
		Director, National Disaster Recovery Planning Division.
		Chief, Enterprise Business Unit.
		Chief Security Officer.
		Chief Technology Officer.
		Senior Counselor to the Administrator and International Relations Officer.
		Director, Emergency Communication Division.
		Chief Administrative Officer.
		Deputy Associate Administrator for Policy, Program Analysis and International Affairs.
		Director, Technological Hazards Division.
		Director, Financial Management Division.
		Deputy Assistant Administrator, Grants Program.
		Deputy Chief Counsel.
		Superintendent, Center for Domestic Preparedness.
		Deputy Director, External Affairs.
		Executive Director for Readiness.
		Deputy Chief Information Officer (Disaster Operations), Mission Support Directorate.
		Deputy Assistant Administrator for Response.
		Deputy Assistant Administrator for Mitigation.
		Director, Acquisition Operations Division.
		Executive Director, Insurance Acquisition and Technology Support Division.
		Deputy Associate Administrator, Mission Support Bureau.
		Chief Procurement Officer.
		Director, National Exercise Division.

Agency	Organization	Title
		Chief Financial Officer.
		Planning Division Director, Office of Response and Recovery.
		Deputy Chief Component Human Capital Officer.
		Assistant Administrator for Insurance.
		Assistant Administrator for Risk Management.
		Director, Grants Management Division.
		Director, National Processing Service Center.
		Deputy Assistant Administrator, Federal Insurance and Mitigation Administration.
		Deputy Chief Financial Officer.
		Assistant Administrator for Mitigation.
		Deputy Assistant Administrator for Insurance.
		Senior Advisor for Financial Management Operations.
		Deputy Regional Administrator (Region X, Seattle).
		Deputy Regional Administrator (Region IX, San Francisco).
		Deputy Regional Administrator (Region VIII, Denver).
		Deputy Regional Administrator (Region VII, Kansas).
		Deputy Regional Administrator (Region V Chicago).
		Deputy Regional Administrator (Region III, Philadelphia).
	Office of the Chief Security Officer	Chief Personnel Security Officer.
		Chief Security Officer.
		Chief, Counterintelligence and Investigations.
		Deputy Chief Security Officer.
	Office of the Chief Financial Officer	Director, Resource Management Transformation Office.
		Director, Financial Management.
		Director, Office of Budget.
		Deputy Budget Director, Office of Budget.
		Director, Departmental General Accounting Office/Inspector General (Gao/Ig) Liaison Office.
		Director, Financial Risk Management and Assurance.
	Office of the Chief Procurement Officer	Deputy Director, Office of Procurement Operations.
		Deputy Chief Procurement Officer.
		Chief Procurement Officer.
		Director, Policy and Acquisition Workforce (PAW).
		Executive Director, Office of Procurement Operations.
		Director, Procurement Policy and Oversight.
		Executive Director, Program Accountability and Risk Management Office.
		Director, Oversight and Strategic Support.
	Office of the Chief Human Capital Officer.	Deputy Chief Human Capital Officer.
		Executive Director, Human Capital Policy and Programs.
		Executive Director, Human Capital Business Systems.
		Executive Director, Diversity and Inclusion.
		Deputy Chief Learning Officer.
		Executive Director Cyber skills Management Support Initiative.
		Executive Director, Human Resources Management and Services.
	Office of the Chief Information Officer	Director of Service Operations.
		Director, Enterprise Business Management Office.
		Executive Director, Chief Information Security Officer.
		Deputy Executive Director, Information Technology Services Office.
		Deputy Chief Information Officer.
		Executive Director, Customer Relationship Management Division.
		Executive Director, Enterprise System Development Office.
		Senior Advisor, Chief Information Officer.
		Executive Director, Office of Applied Technology (Chief Technology Officer).
		Executive Director, Information Sharing.
	Office of the Chief Readiness Support Officer.	Deputy Chief Readiness Support Officer, Operations Support.
		Deputy Chief Readiness Support Officer.
		Director, Headquarters Management and Development.
		Director, Safety and Environmental Programs.
		Director of Asset and Logistics Management.
	Office of the Under Secretary for Science and Technology.	Director, Interagency Office.
		Director, Test and Evaluation.
		Director, Borders and Maritime Security Division.
		Director, Chemical Biological Defense Division.
		Deputy Director, Homeland Security Advanced Research Projects Agency.

Agency	Organization	Title
		Director, Finance and Budget Division.
		Director, Infrastructure Protection and Disaster Management Division.
		Director, Explosives Division.
		Director, Office of National Laboratories.
		Director, Cyber Security Division.
		Director, Research and Development Partnerships.
		Director, Capability Development Support.
		Director, Office for Interoperability and Compatibility.
		Executive Director, National Bio and Agro-Defense Facility.
DEPARTMENT OF HOMELAND SECURITY, OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Assistant Inspector General, Integrity and Quality Oversight.
		Assistant Inspector General for Management.
		Deputy Assistant Inspector General for Management.
		Deputy Assistant Inspector General for Investigations.
		Deputy Assistant Inspector General, Audits.
		Chief of Staff.
		Deputy Inspector General.
		Deputy Assistant Inspector General, Audits.
		Deputy Assistant Inspector General, Emergency Management Oversight.
		Assistant Inspector General for Emergency Management Oversight.
		Assistant Inspector General, Inspections.
		Assistant Inspector General, Information Technology Audits.
		Assistant Inspector General, Investigations.
		Counsel to the Inspector General.
		Assistant Inspector General, Audits.
		Deputy Assistant Inspector General for Investigations.
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Administration	Chief Disaster and National Security Officer.
		Deputy Assistant Secretary for Business Management and Administration.
	Office of the Chief Human Capital Officer.	Director, Office of Human Capital Services.
		Deputy Chief Human Capital Officer.
		Chief Learning Officer.
	Office of the Chief Financial Officer	Assistant Chief Financial Officer for Systems.
		Assistant Chief Financial Officer for Accounting.
		Deputy Chief Financial Officer.
		Assistant Chief Financial Officer for Budget.
		Assistant Chief Financial Officer for Financial Management.
		Deputy Assistant Chief Financial Officer for Budget.
	Office of the Chief Information Officer	Deputy Chief Information Officer—Office of Customer Relationship and Performance Management.
		Deputy Chief Information Officer for Business and Information Technology Resource Management Officer.
		Principal Deputy Chief Information Officer.
		Deputy Chief Information Officer for Infrastructure and Operations.
	Office of the Chief Procurement Officer	Deputy Chief Procurement Officer.
	Office of Community Planning and Development.	Deputy Assistant Secretary for Special Needs Programs.
	Office of Departmental Equal Employment Opportunity.	Director, Office of Departmental Equal Employment Opportunity.
	Office of the General Counsel	Associate General Counsel for Program Enforcement.
		Director, Departmental Enforcement Center.
	Government National Mortgage Association.	Senior Vice President Office of Capital Markets.
		Senior Vice President, Office of Program Operations.
		Senior Vice President for Mortgage-Backed Securities.
		Senior Vice President of Administration and Senior Advisor to the Office of the President.
		Senior Vice President, Office of Enterprise Data and Technology Solutions.
		Senior Vice President and Chief Financial Officer.
		Senior Vice President and Chief Risk Officer.
	Office of Housing	Associate Deputy Assistant Secretary for Healthcare Programs.
		Housing Federal Housing Administration, Comptroller.
		Director, Program Systems Management Office.
		Deputy Assistant Secretary for Healthcare Programs.
		Housing Federal Housing Administration Deputy Comptroller.
		Deputy Assistant Secretary for Finance and Budget.

Agency	Organization	Title
	Office of Policy Development and Research.	Associate Deputy Assistant Secretary for Policy Development.
	Office of Public and Indian Housing	Deputy Assistant Secretary for the Real Estate Assessment Center.
		Director for Budget and Financial Management.
		Deputy Assistant Secretary for Public Housing Investments.
		General Deputy Assistant Secretary for Public and Indian Housing.
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Assistant Inspector General for Office of Management and Technology.
		Deputy Assistant Inspector General for Audit—Special Operations.
		Deputy Assistant Inspector General for Audit (Field Operations).
		Deputy Assistant Inspector General for Investigation (Field Operations).
		Deputy Assistant Inspector General for Information Technology.
		Counsel to the Inspector General.
		Deputy Assistant Inspector General for Investigation (Headquarters Operations).
		Deputy Assistant Inspector General for Management.
		Deputy Inspector General.
		Assistant Inspector General for Audit.
		Assistant Inspector General for Investigation.
		Assistant Inspector General for Office of Evaluation.
DEPARTMENT OF THE INTERIOR	Office of the Solicitor	Designated Agency Ethics Official.
		Associate Solicitor for Administration.
	Office of Assistant Secretary—Policy, Management and Budget.	Chief, Division of Budget and Program Review.
		Chief, Diversity Officer/Director, Office of Civil Rights.
		Deputy Assistant Secretary, Public Safety, Resource Protection and Emergency Services.
		Deputy Assistant Secretary, Human Capital and Diversity.
		Director, Office of Emergency Management.
		Director, Office of Law Enforcement and Security.
		Deputy Director, Office of Financial Management.
		Director, Office of Human Resources.
		Director, Office of Financial Management and Deputy Chief Financial Officer.
		Deputy Assistant Secretary, Budget, Finance, Performance and Acquisition.
		Chief, Budget Administration and Departmental Management.
	Office of Natural Resources Revenue Management.	Deputy Director, Office of Natural Resources Revenue Management.
		Program Director for Coordination, Enforcement, Valuation and Appeals.
		Program Director for Financial and Production Management.
		Program Director for Audit and Compliance Management.
	Office of Hearings and Appeals	Director, Office of Hearings and Appeals.
	United States Fish and Wildlife Service	Chief, Office of Law Enforcement.
	National Park Service	Associate Director Interpretation and Education.
		Financial Advisor (Comptroller).
		Chief Financial Officer.
	Field Offices	Park Manager.
		Park Manager (Superintendent).
	Bureau of Reclamation	Director, Management Services Office.
		Director, Safety, Security, and Law Enforcement.
	United States Geological Survey	Director, Earth Resources Observation and Science Center and Space Policy Advisor.
		Associate Director for Water.
		Associate Director for Ecosystems.
		Director, Office of Science Quality and Integrity.
		Associate Director for Core Science Systems.
		Chief Scientist for Hydrology.
		Principal Deputy Director.
		Associate Director for Administration.
		Deputy Director, United States Geological Survey.
		Associate Director for Human Capital.
		Associate Director for Communications and Publishing.
		Associate Director for Budget, Planning, and Integration.
		Chief, Geospatial Information, Integration and Analysis.
		Associate Director for Natural Hazards.

Agency	Organization	Title
		Associate Director for Climate Variability and Land Use Change.
		Associate Director for Energy and Minerals.
	Field Offices	Regional Director—Midwest.
		Regional Director—Northwest.
		Regional Director—Pacific.
		Regional Director—Alaska.
		Regional Director—Southeast.
		Regional Director—Northeast.
		Regional Director—Southwest.
	Bureau of Land Management	Assistant Director, Human Capital Management.
	Field Offices	Director, National Operations Center.
		Regional Director Mid Continent Regional Coordinating Center.
		Regional Director, Appalachian Region.
	Bureau of Ocean Energy Management	Strategic Resources Chief.
	Office of Assistant Secretary—Indian Affairs.	Director of Human Capital Management.
DEPARTMENT OF THE INTERIOR, OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Senior Advisor.
		Associate Inspector General for Communication.
		Chief of Staff (2).
		Deputy Inspector General.
	Office of General Counsel	General Counsel.
	Office of Recovery and Accountability	Assistant Inspector General for Recovery Oversight.
	Office of Investigations	Assistant Inspector General for Investigations.
	Office of Management	Deputy Assistant Inspector General for Management.
		Assistant Inspector General for Management.
	Office of Information Technology	Assistant Inspector General for Information Technology.
	Office of Audits, Inspections, and Evaluations.	Deputy Assistant Inspector General for Compliance and Finance.
		Assistant Inspector General for Audits, Inspections, and Evaluations.
DEPARTMENT OF JUSTICE	Office of the Deputy Attorney General	Director, Office of Privacy and Civil Liberties.
		Chief, Professional Misconduct Review Unit.
	Office of the Legal Counsel	Special Counsel (2).
	Office of Professional Responsibility	Deputy Counsel on Professional Responsibility.
		Counsel on Professional Responsibility.
	Justice Management Division	General Counsel.
		Director, Procurement Services Staff.
		Deputy Assistant Attorney General for Information Resources Management/Chief Information Officer.
		Director, Debt Collection Management Staff.
		Director, Budget Staff.
		Deputy Director, Budget Staff, Operations and Funds Control.
		Director, Departmental Ethics Office.
		Director, Enterprise Solutions Staff.
		Director, Equal Employment Opportunity Staff.
		Director, Office of Attorney Recruitment and Management.
		Deputy, Chief Information Officer for E-Government Services Staff.
		Director, Finance Staff.
		Director, Service Delivery Staff.
		Deputy Director, Service Delivery Staff.
		Deputy Assistant Attorney General (Controller).
		Director, Service Engineering Staff.
		Senior Advisor.
		Director, Cybersecurity Services Staff.
		Chief Technology Officer.
		Deputy Chief Information Officer.
		Deputy Director, Human Resources.
		Deputy Director, Auditing, Finance Staff.
		Deputy Director, Budget Staff, Programs and Performance.
		Director, Operations Services Staff.
		Director, Information Technology Policy and Planning Staff.
		Director, Security and Emergency Planning Staff.
		Director, Human Resources.
		Deputy Assistant Attorney General, Policy, Management, and Planning.
		Assistant Attorney General for Administration.
		Director, Asset Forfeiture Management Staff.
		Director, Facilities and Administrative Services Staff.
		Director, Library Staff.

Agency	Organization	Title
		Deputy Assistant Attorney General for Human Resources and Administration.
	Professional Responsibility Advisory Office.	Director, Professional Responsibility Advisory Office.
	Federal Bureau of Prisons	Regional Director, Western Region.
		Regional Director, North Central Region.
		Regional Director, Southeast Region.
		Chief, Office of Public Affairs.
		Assistant Director, Health Services Division.
		Senior Deputy Assistant Director, Industries, Education, and Vocational Training Division.
		Senior Deputy General Counsel, Office of the General Counsel.
		Senior Deputy Assistant Director, Program Review Division.
		Warden Federal Correctional Institution, Thomson, Illinois.
		Warden, Federal Correctional Institution, Fort Worth, Texas.
		Senior Deputy Assistant Director, Administration Division.
		Assistant Director, Reentry Services Division.
		Senior Deputy Assistant Director, Information, Policy, and Public Affairs Division.
		Senior Deputy General Counsel, Office of General Counsel.
		Assistant Director, Information, Policy and Public Affairs.
		Senior Deputy Assistant Director, Health Services Division.
		Senior Deputy Assistant Director, Industries, Education and Vocational Training Division.
		Warden, Federal Correctional Institution, Mendota, California.
		Warden, Federal Correctional Institution, Williamsburg, South Carolina.
		Warden, Federal Correctional Institution, Bennettsville, South Carolina.
		Warden, Federal Correctional Institution, Manchester, Kentucky.
		Warden, Federal Correctional Institution, Gilmer, West Virginia.
		Warden, Federal Correctional Institution, Sheridan, Oregon.
		Warden, Federal Correctional Institution, Memphis, Tennessee.
		Warden, Metropolitan Detention Center, Guaynabo, Puerto Rico.
		Warden, Federal Correctional Institution, Three Rivers, Texas.
		Warden, Federal Correctional Institution, Schuylkill, Pennsylvania.
		Warden, Federal Correctional Institution, Pekin, Illinois.
		Warden, Federal Correctional Institution, Mckean, Pennsylvania.
		Warden, Federal Correctional Institution, Greenville, Illinois.
		Warden, Federal Correctional Institution, Cumberland, Maryland.
		Complex Warden, United States Penitentiary, Tucson, Arizona.
		Warden, United States Penitentiary Coleman-I, Coleman, Florida.
		Senior Deputy Assistant Director Re-Entry Services Division.
		Warden, Federal Correctional Complex, Forrest City, Arkansas.
		Warden, United States Penitentiary, Canaan, Pennsylvania.
		Complex Warden, Federal Correctional Complex, Yazoo City, Mississippi.
		Warden, United States Penitentiary, Hazelton, West Virginia.
		Complex Warden, Federal Correctional Complex, Petersburg, Virginia.
		Warden, United States Penitentiary, McCrery, Kentucky.
		Complex Warden, Federal Correctional Complex, Victorville, California.
		Warden, United States Penitentiary, Pollock, Louisiana.
		Warden, Federal Correctional Institution, Jessup, Georgia.
		Warden, Federal Correctional Complex, Bunter, North Carolina.
		Warden, Federal Correctional Complex, Terre Haute, Indiana.

Agency	Organization	Title
		Assistant Director, Industries, Education, and Vocational Training Division.
		Warden, United States Penitentiary, Marion, Illinois.
		Warden, Federal Medical Center, Lexington, Kentucky.
		Warden, United States Medical Center Federal Prisoners, Springfield, Missouri.
		Warden, Federal Correctional Complex, Lompoc, California.
		Warden, United States Penitentiary, Lewisburg, Pennsylvania.
		Warden, United States Penitentiary, Leavenworth, Kansas.
		Warden, United States Penitentiary, Atlanta, Georgia.
		Regional Director, South Central Region.
		Regional Director, Northeast Region.
		Assistant Director, Office of General Counsel.
		Assistant Director, Correctional Programs Division.
		Assistant Director for Administration.
		Warden, Metropolitan Detention Center, Los Angeles, California.
		Warden, Federal Medical Center, Devens, Massachusetts.
		Warden, Federal Correctional Institution, Edgefield, South Carolina.
		Assistant Director, Program Review Division.
		Warden, Federal Correctional Institution, Fairton, New Jersey.
		Warden, Federal Detention Center, Miami, Florida.
		Warden, Federal Correctional Institution, El Reno, Oklahoma.
		Senior Deputy Assistant Director, Human Resources Management Division.
		Warden, Federal Transfer Center, Oklahoma City, Oklahoma.
		Warden, Federal Correctional Complex, Allenwood, Pennsylvania.
		Warden, Federal Medical Center, Carswell, Texas.
		Warden, Federal Correctional Complex, Oakdale, Louisiana.
		Warden, United States Penitentiary-High, Florence, Colorado.
		Warden, Federal Correctional Complex, Florence, Colorado.
		Warden, Federal Correctional Institution, Fort Dix, New Jersey.
		Warden, Federal Correctional Institution, Talladega, Alabama.
		Deputy Director.
		Regional Director Middle Atlantic Region.
		Warden, Federal Medical Center, Rochester, Minnesota.
		Warden, Federal Correctional Institution, Phoenix, Arizona.
		Senior Deputy Assistant Director, Correctional Programs Division.
		Assistant Director Human Resources Management Division.
		Warden, Federal Correctional Institution, Marianna, Florida.
		Warden, Metropolitan Detention Center, Brooklyn, New York.
		Warden, Federal Correctional Institution, Otisville, New York.
		Warden, Federal Correctional Institution, Beckley, West Virginia.
		Warden, Federal Correctional Complex, Coleman, Florida.
		Warden, Federal Correctional Complex, Beaumont, Texas.
		Senior Deputy Assistant Director, Information, Policy, and Public Affairs Division.
		Senior Deputy Assistant Director Administration Division.
		Warden, Metropolitan Correctional Center, New York, New York.
		Warden, United States Penitentiary, Atwater, California.
		Warden, United States Penitentiary, Lee, Virginia.
		Senior Counsel, Office of General Counsel.
		Warden, United States Penitentiary, Big Sandy, Kentucky.
	Executive Office for Immigration Review.	Deputy Chief Immigration Judge.
		Assistant Director for Administration.
		Vice Chairman, Board of Immigration Appeals.
		Chief Administrative Hearing Officer.
		General Counsel.

Agency	Organization	Title
		Chairman, Board of Immigration Appeals.
		Chief Immigration Judge.
	Criminal Division	Counselor for Transnational Organized Crime and International Affairs.
		Chief, Computer Crime and Intellectual Property Section.
		Chief, Human Rights and Special Prosecutions Section.
		Chief, Narcotic and Dangerous Drug Section.
		Chief, Public Integrity Section.
		Chief, Fraud Section.
		Chief, Appellate Section.
		Chief, Organized Crime and Gang Section.
		Deputy Chief Public Integrity Section.
		Chief, Asset Forfeiture and Money Laundering Section.
		Deputy Chief for Litigation.
		Executive Officer.
		Deputy Chief, Appellate Section.
		Director, International Criminal Investigative Training Assistance Program.
		Chief, Child Exploitation and Obscenity Section.
		Deputy Chief for Organized Crime and Gang Section.
		Senior Counsel for Cybercrime.
		Director, Office of Overseas Prosecutorial Development, Assistance, and Training.
		Deputy Chief, Narcotic and Dangerous Drug Section.
		Deputy Chief, Computer Crime and Intellectual Property Section.
		Deputy Chief, Asset Forfeiture and Money Laundering Section.
	National Security Division	Chief, Operations Section.
		Deputy Assistant Attorney General, Foreign Intelligence Surveillance Act, Operations and Intelligence Oversight.
		Executive Officer.
		Special Counsel for National Security.
		Director of Risk Management and Senior Counsel.
		Chief, Oversight Section.
		Director, Freedom of Information Act and Declassification Program.
		Chief, Appellate Unit.
		Deputy Chief, Operations Section.
		Deputy Chief, Counterterrorism Section.
		Deputy Chief, Counterespionage Section.
		Chief, Foreign Investment Review Staff.
	Executive Office for United States Attorneys.	Chief Human Resources Officer.
		Deputy Director.
		Counsel, Legal Programs and Policy.
		Chief, Information Officer.
		Deputy Director for Administration and Management.
		Chief Financial Officer.
		Associate Director, Office of Legal Education.
		General Counsel.
	United States Marshals Service	Assistant Director for Prisoner Operations.
		Assistant Director, Justice Prisoner and Alien Transportation System (JPATS).
		Associate Director, Administration.
		Associate Director, Operations.
		Principal Deputy General Counsel.
		Assistant Director, Information Technology.
		Deputy Director.
		Assistant Director, Asset Forfeiture.
		Assistant Director, Management Support.
		Assistant Director, Witness Security.
		Assistant Director, Financial Services.
		Assistant Director, Human Resources.
		Assistant Director, Training.
		Assistant Director, Investigative Operations.
		Principal Deputy General Counsel.
		Deputy Assistant Director Acquisition and Procurement.
		Assistant Director Judicial Security.
		Assistant Director Office of Inspection.
		Assistant Director, Tactical Operations.
	Bureau of Alcohol, Tobacco, Firearms and Explosives.	Special Agent In Charge, National Center for Explosives Training and Research.
		Deputy Director.
		Executive Assistant to the Director.

Agency	Organization	Title
		Deputy Assistant Director, Field Operations (Programs).
		Deputy Assistant Director, Industry Operations.
		Chief, Special Operations Division.
		Deputy Director, Terrorist Explosive Device Analytical Center.
		Special Agent In Charge, Denver.
		Special Agent In Charge, Newark.
		Special Agent In Charge, Baltimore.
		Special Agent In Charge, New Orleans.
		Special Agent In Charge, Columbus.
		Special Agent In Charge, Tampa.
		Special Agent In Charge, Seattle.
		Special Agent In Charge, Louisville.
		Special Agent In Charge, Detroit.
		Special Agent In Charge, Charlotte.
		Special Agent In Charge, Miami.
		Special Agent In Charge, San Francisco.
		Special Agent In Charge, Phoenix.
		Special Agent In Charge, Philadelphia.
		Special Agent In Charge, Kansas City.
		Special Agent In Charge, Chicago.
		Special Agent In Charge, Boston.
		Special Agent In Charge, Atlanta.
		Special Agent In Charge, Saint Paul.
		Deputy Assistant Director, Office of Public and Governmental Affairs.
		Assistant Director, Office of Public and Governmental Affairs.
		Deputy Assistant Director, Office of Strategic Intelligence and Information.
		Assistant Director, Office of Strategic Intelligence and Information.
		Special Agent In Charge, Dallas.
		Special Agent In Charge, Nashville.
		Deputy Assistant Director, Industry Operations.
		Deputy Assistant Director, Field Operations—East.
		Deputy Assistant Director, Office of Professional Responsibility and Security Operations.
		Special Agent In Charge, Houston.
		Special Agent In Charge, Washington District of Columbia.
		Special Agent In Charge, New York.
		Special Agent In Charge, Los Angeles.
		Deputy Assistant Director, Field Operations—West.
		Deputy Assistant Director, Forensic Services.
		Assistant Director, Science and Technology.
		Deputy Assistant Director for Information Technology and Deputy Chief Information Officer.
		Assistant Director, Management and Chief Financial Officer.
		Deputy Assistant Director, Management and Chief Financial Officer.
		Assistant Director, Office of Professional Responsibility and Security Operations.
		Assistant Director, Human Resources and Professional Development.
		Deputy Assistant Director, Human Resources and Professional Development.
		Deputy Assistant Director, Enforcement Programs and Services.
		Assistant Director, Enforcement Programs and Services.
		Deputy Assistant Director, Field Operations—Central.
		Assistant Director, Field Operations.
		Special Assistant to the Director.
	Antitrust Division	Director, Economic Enforcement.
		Chief, Telecommunications and Media Section.
		Executive Officer.
	Civil Division	Deputy Director, Office of Immigration Litigation, Appellate Section.
		Deputy Director, Consumer Protection Branch.
		Deputy Branch Director.
		Deputy Director, Appellate Staff.
		Appellate Litigation Counsel.
		Director, Office of Management Programs.
		Deputy Director, Commercial Litigation Branch.

Agency	Organization	Title
		Deputy Branch Director, Federal Programs.
		Director, Consumer Protection Branch.
		Deputy Director, Appellate Branch.
		Deputy Director, Commercial Litigation Branch.
		Deputy Branch Director, Federal Programs.
		Director, Consumer Litigation Branch, Foreign Litigation Section.
		Special Litigation Counsel, Aviation and Admiralty Section.
		Deputy Director, Office of Immigration Litigation, Appellate Section.
		Deputy Director, Commercial Litigation Branch.
		Deputy Branch Director, Federal Programs.
		Special Immigration Counsel.
		Special Counsel to the Assistant Attorney General.
		Deputy Director, Constitutional and Specialized Tort Litigation.
	Environment and Natural Resources Division.	Senior Litigation Counsel.
		Chief, Environmental Enforcement Section.
		Chief, Natural Resources Section.
		Chief, Land Acquisition Section.
		Chief, Appellate Section.
		Chief, Indian Resources Section.
		Chief, Environmental Defense Section.
		Deputy Chief, Environmental Enforcement Section (2).
		Deputy Chief, Natural Resources Section.
		Deputy Section Chief, Natural Resources Section.
		Deputy Chief, Environmental Defense Section.
		Deputy Chief, Appellate Section.
		Executive Officer.
		Deputy Chief, Environmental Enforcement Section.
		Chief, Environmental Crimes Section.
		Chief, Wildlife and Marine Resources Section.
	Tax Division	Special Litigation Counsel.
		Chief, Civil Trial Section, Western Region.
		Chief, Civil Trial Section, Southern Region.
		Chief, Civil Trial Section, Northern Region.
		Chief, Civil Trial Section, Central Region.
		Chief, Court of Federal Claims Section.
		Chief, Appellate Section.
		Chief, Criminal Enforcement Section, Western Region.
		Deputy Assistant Attorney General.
		Chief, Office of Review.
		Executive Officer.
		Chief, Civil Trial Section, Eastern Region.
		Chief, Civil Trial Section, Southwestern Region.
		Chief, Criminal Enforcement Section, South Region.
		Senior Litigation Counsel.
		Chief, Criminal Appeals and Tax Enforcement Policy Section.
		Chief, Criminal Enforcement Section, North Region.
	Civil Rights Division	Principal Deputy Chief, Housing and Civil Enforcement Section.
		Executive Officer.
		Principal Deputy Chief, Employment Litigation Section.
		Chief, Policy Strategy Section.
	Executive Office for Organized Crime Drug Enforcement Task Forces.	Director, Organized Crime Drug Enforcement Task Forces.
	Office of Justice Programs	Director, Office of Audit, Assessment and Management.
		Deputy Chief Financial Officer.
		Chief Financial Officer.
		Director, Office of Administration.
		Director of Communications.
		Deputy Director, Office for Victims of Crime.
	National Institute of Justice	Deputy Director, National Institute of Justice, Office of Science and Technology.
	Office of Tribal Justice	Director.
DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL.	Audit Division	Deputy Assistant Inspector General, Audit Division.
		Assistant Inspector General, Audit Division.
	Evaluation and Inspections Division	Assistant Inspector General, Evaluation and Inspections Division.
	Front Office	General Counsel.
		Deputy Inspector General.
	Investigations Division	Deputy Assistant Inspector General, Investigations Division.
		Assistant Inspector General, Investigations Division.

Agency	Organization	Title
	Management and Planning Division	Deputy Assistant Inspector General, Management and Planning.
		Assistant Inspector General, Management and Planning Division.
	Oversight and Review Division	Deputy Assistant Inspector General, Oversight and Review Division.
		Assistant Inspector General, Oversight and Review Division.
DEPARTMENT OF LABOR	Women's Bureau	Deputy Director, Women's Bureau.
	Office of Public Affairs	Senior Managing Director.
	Bureau of International Labor Affairs	Director, Office of Child Labor, Forced Labor Human Trafficking.
		Director, Office of Trade and Labor Affairs.
	Office of the Assistant Secretary for Policy.	Director, Office of Regulatory and Programmatic Policy.
		Deputy Assistant Secretary for Policy.
	Office of the Solicitor	Associate Solicitor for Plan Benefits Security.
		Regional Solicitor—Philadelphia.
		Regional Solicitor—Dallas.
		Regional Solicitor—San Francisco.
		Deputy Solicitor (Regional Operations).
		Associate Solicitor for Fair Labor Standards.
		Regional Solicitor—New York.
		Regional Solicitor—Boston.
		Regional Solicitor—Chicago.
		Regional Solicitor—Atlanta.
		Associate Solicitor for Federal Employees' and Energy Workers' Compensation.
		Associate Solicitor for Occupational Safety and Health.
		Associate Solicitor for Black Lung and Longshore Legal Services.
		Associate Solicitor for Legal Counsel.
		Associate Solicitor for Civil Rights and Labor Management.
		Associate Solicitor, Management and Administrative Legal Services Division.
		Deputy Solicitor (National Operations).
		Associate Solicitor for Mine Safety and Health.
	Office of Chief Financial Officer	Deputy Chief Financial Officer.
		Associate Deputy Chief Financial Officer for Financial Systems.
	Office of the Assistant Secretary for Administration and Management.	Director, Program Planning and Results Center.
		Deputy Chief Information Officer.
		Deputy Assistant Secretary for Operations.
		Director of Enterprise Services.
		Director, National Capital Service Center.
		Deputy Director of Human Resources.
		Director, Customer Service.
		Chief Procurement Officer.
		Chief Cyber Security Officer.
		Director of Civil Rights.
		Director, Business Operations Center.
		Director, Office of Budget.
	Office of Federal Contract Compliance Programs.	Regional Director for Office of Federal Contracts Compliance Programs (6).
		Administrative Officer.
	Wage and Hour Division	Regional Administrator for Wage and Hour (2).
		Deputy Administrator for Program Operations.
		Assistant Administrator, Office of Government Contracts.
		Assistant Administrator, Operations.
	Office of Workers Compensation Programs.	Comptroller.
		Deputy Director for Office of Workers' Compensation Programs.
		Director, Office of Workers' Compensation Programs.
		Director, Energy Employees' Occupational Illness Compensation.
		Regional Director (Northeast Region).
		Regional Director—Dallas (2).
		Administrative Officer.
		Regional Director (3).
		Director for Federal Employees' Compensation.
	Office of Labor-Management Standards	Deputy Director, Office of Labor Management Standards.
		Senior Advisor and Director of Reports and Disclosures.
		Director, Office of Enforcement and International Union Audits.

Agency	Organization	Title
	Employee Benefits Security Administration.	Deputy Assistant Secretary for Program Operations.
		Director of Regulations and Interpretations.
		Director of Exemption Determinations.
		Chief Economist and Director of Policy and Research.
		Director of Enforcement.
		Regional Director—San Francisco.
		Regional Director—Kansas City.
		Regional Director—Atlanta.
		Regional Director—Boston.
		Director, Office of Outreach Education and Assistance.
		Director of Health Plan Standards Compliance and Assistance.
		Director of Information Management.
		Regional Director (2).
		Regional Director, Cincinnati.
		Regional Director—Chicago (2).
		Regional Director—Philadelphia.
		Regional Director—New York.
		Chief Accountant.
	Bureau of Labor Statistics	Deputy Commissioner for Labor Statistics.
		Associate Commissioner for Field Operations.
		Assistant Commissioner for Occupational Statistics and Employment Projections.
		Assistant Commissioner for Regional Operations (3).
		Associate Commissioner Productivity and Technology.
		Associate Commissioner for Prices and Living Conditions.
		Associate Commissioner for Administration.
		Assistant Commissioner for Industrial Prices and Price Indexes.
		Assistant Commissioner for Industry Employment Statistics.
		Assistant Commissioner for International Prices.
		Associate Commissioner for Publications and Special Studies.
		Assistant Commissioner for Current Employment Analysis.
		Associate Commissioner for Technology and Survey Processing.
		Assistant Commissioner for Compensation Levels and Trends.
		Assistant Commissioner for Safety, Health and Working Conditions.
		Associate Commissioner for Compensation and Working Conditions.
		Director of Technology and Computing Services.
		Director of Survey Processing.
		Associate Commissioner for Survey Methods Research.
		Associate Commissioner for Employment and Unemployment Statistics.
		Assistant Commissioner for Consumer Prices and Prices Indexes.
	Employment and Training Administration.	Administrator, Apprenticeship and Training, Employee and Labor Services.
		Regional Administrator (6).
		Administrator, Office of Job Corps.
		Administrator, Office of Foreign Labor Certification.
		Administrator, Office of Workforce Security.
		Associate Administrator.
		Comptroller.
		Deputy Assistant Secretary (Operations and Management).
		Deputy Administrator Job Corp.
		Administrator, Office of Policy Development and Research.
		Deputy Administrator.
	Occupational Safety and Health Administration.	Safety and Health Administrator—Chicago.
		Director, Directorate of Standards and Guidance.
		Regional Administrator—Boston.
		Regional Administrator—San Francisco.
		Director, Office of Training and Education.
		Regional Administrator—Seattle.
		Regional Administrator—Philadelphia.
		Regional Administrator—New York.
		Director of Technical Support and Emergency Management.
		Regional Administrator—Atlanta.
		Director, Directorate of Cooperative and State Programs.
		Regional Administrator—Dallas.

Agency	Organization	Title
		Regional Administrator—Denver.
		Director, Directorate of Enforcement Programs.
		Deputy Assistant Secretary.
		Director of Construction.
		Director, Administrative Programs.
	Mine Safety and Health Administration	Program Manager.
		Deputy Assistant Secretary.
		Director of Administration and Management.
		Administrator for Coal Mine Safety and Health.
		Director of Assessments.
		Director of Technical Support.
		Administrator for Metal and Nonmetal.
		Deputy Administrator for Coal Mine Safety and Health.
		Director of Program Evaluation and Information Resources.
		Director, Educational Policy and Development.
	Veterans Employment and Training Service.	Director, Office of Field Operations.
		Deputy Assistant Secretary for Operations and Management.
		Director, Department of Labor Homeless Assistance Program.
	Office of Disability Employment Policy	Deputy Assistant Secretary for Office of Disability Employment Policy.
DEPARTMENT OF LABOR, OFFICE OF INSPECTOR GENERAL.	Office of Inspector General	Deputy Assistant Inspector General for Information Technology Audits.
		Deputy Assistant Inspector General for Management and Policy.
		Chief Performance and Risk Management Officer.
		Deputy Inspector General for Operations.
		Assistant Inspector General for Audit.
		Assistant Inspector General for Labor Racketeering.
		Deputy Assistant Inspector General for Labor Racketeering.
		Deputy Assistant Inspector General for Audit.
		Assistant Inspector General for Inspections and Special Investigations.
		Deputy Inspector General.
		Counsel.
		Assistant Inspector General for Management and Policy.
MERIT SYSTEMS PROTECTION BOARD.	Office of the Clerk of the Board	Clerk of the Board.
	Office of Financial and Administrative Management.	Director, Financial and Administrative Management.
	Office of Policy and Evaluation	Director, Office of Policy and Evaluation.
	Office of Information Resources Management.	Director, Information Resources Management.
	Office of Regional Operations	Director, Office of Regional Operations.
	Atlanta Regional Office	Regional Director, Atlanta.
	Central Region, Chicago Regional Office.	Regional Director, Chicago.
	Northeast Region, Philadelphia Regional Office.	Regional Director, Philadelphia.
	Western Region, San Francisco Regional Office.	Regional Director, San Francisco.
	Washington, Dc Region, Washington Regional Office.	Regional Director, Washington, D.C..
	Dallas Regional Office	Regional Director, Dallas.
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Exploration Mission Systems Directorate.	Director, Exploration Research and Technology Programs.
		Director, Communication and Public Engagement.
		Director, Spaceport Integration and Services.
		Senior Liaison for Stem Communications.
		Director, NASA Aeronautics and Research Institute.
		Associate Director for Mission Support.
		Director, Solar System Exploration Research Virtual Institute.
		Deputy Director for Science.
	Office of the Administrator	Deputy Associate Administrator.
		Asteroid Redirect Mission, Program Director.
	Office of the Deputy Administrator	Associate Administrator, Strategy and Policy.
	Office of Chief of Staff	Deputy Chief of Staff.
		Associate Administrator, Strategy and Plans.
		Director, Office of Evaluation.
	Office of the Chief Scientist	Associate Chief Scientist for Life and Microgravity Sciences.
		Deputy Chief Scientist.
	Human Exploration and Operations Mission Directorate.	Director, Human Research Program.
		Director, Network Services.

Agency	Organization	Title
		Director, Human Spaceflight Capabilities Division.
		Assistant Deputy Associate Administrator for Exploration Systems Development.
		Director, Resources Management Office.
		Manager, Rocket Propulsion Test Program Office.
		Director, International Space Station and Space Shuttle Program Resource.
		Director, Advanced Capabilities Division.
		Deputy Associate Administrator for Space Communications and Navigation.
		Assistant Associate Administrator for Resources Management and Analysis Office.
		Assistant Associate Administrator for Human Exploration Capability.
		Director, Advanced Exploration Systems.
		Deputy Associate Administrator for Policy and Plans.
		Director, Program and Strategic Integration Office.
		Director, Human Spaceflight Capabilities Division.
		Director, Strategic Integration and Management Division.
	Office of the Chief Technologist	Deputy Chief Technologist.
	Office of Evaluation	Director, Cost Analysis Division.
	Science Mission Directorate	Deputy Associate Administrator for Management.
		Deputy Associate Administrator for Programs.
		Deputy Director for Programs, Earth Science Division.
		Deputy Associate Administrator for Research.
		Director, Science Engagement and Partnerships.
	James Webb Space Telescope Program Office.	Director, James Webb Space Telescope Program.
	Planetary Science Division	Mars Exploration Program Director.
		Director, Planetary Science Division.
		Deputy Director, Planetary Science Division.
	Astrophysics Division	Deputy Director, Astrophysics Division.
		Director, Astrophysics Division.
	Heliophysics Division	Director, Heliphysics Division.
		Deputy Director, Heliophysics Division.
	Earth Science Division	Program Director Research and Analysis Program.
		Director, Earth Science Division.
		Deputy Director, Earth Science.
	Joint Agency Satellite Division	Deputy Director, Joint Agency Satellite Division.
		Director, Joint Agency Satellite Division.
	Strategic Integration and Management Division.	Director, Strategic Integration and Management Division.
	Aeronautics Research Mission Directorate.	Director for Integrated Aviation Systems Program.
		Director, Fundamental Aeronautics.
		Director of Transformative Aeronautics Concepts Program Office.
		Director of Airspace Operations and Safety Program Office.
		Director, Strategy, Architecture, and Analysis Office.
		Director, Integration and Management Office.
	Office of Program Analysis and Evaluation.	Director, Independent Program Assessment Office.
	Office of Safety and Mission Assurance	Director, Independent Verification and Validation Program.
	Office of the Chief Financial Officer/Comptroller.	Deputy Chief Financial Officer (Strategy and Performance).
		Associate Deputy Chief Financial Officer (Finance).
	Office of Education	Information Technology Manager.
		Deputy Associate Administrator for Education.
	Space Technology Mission Directorate	Deputy Associate Administrator for Programs.
		Deputy Associate Administrator.
		Deputy Associate Administrator for Management.
	Office of the Chief Engineer	Deputy Chief Engineer for Engineering Integration.
		Human Exploration and Operations Mission Directorate Chief Engineer.
		Senior Advisor for Innovation.
	Mission Support Directorate	Assistant Associate Administrator for Resources and Performance.
		Deputy Associate Administrator for Mission Support.
	Office of Headquarters Operations	Director, Human Resource Management Division.
		Director, Headquarters Information Technology and Communications Division.
	Office of Human Capital Management	Assistant Administrator for Human Capital Management.
		Director, Workforce Systems and Accountability Division.
		Director, Workforce Planning and Analysis Division.
		Director, Workforce Management and Development Division.

Agency	Organization	Title
		Deputy Assistant Administrator for Human Capital Management.
		Special Assistant to the Chief Human Capital Officer.
	Office of Strategic Infrastructure	Deputy Assistant Administrator for Policy.
		Director, Environmental Management Division.
		Director, Facilities Engineering and Real Property Division.
		Deputy Assistant Administrator for Strategic Infrastructure.
		Director, Facilities and Real Estate.
	National Aeronautics and Space Administration Shared Services Center.	Executive Director of National Aeronautics and Space Administration Shared Services Center.
		Director, Support Operations Directorate.
		Deputy Director, National Aeronautics and Space Administration Shared Services Center.
	Office of Protective Services	Deputy Assistant Administrator for Protective Services.
		Director of Counterintelligence/Counterterrorism for Protective Services.
		Assistant Administrator for Protective Services.
	Office of Procurement	Director, Analysis Division.
		Director, Program Operations Division.
		Assistant Administrator for Procurement.
		Director, Contract Management Division.
	National Aeronautics and Space Administration Management Office.	Director, National Aeronautics and Space Administration Management Office.
	Office of Safety and Mission Assurance	Deputy Chief Safety and Mission Assurance Officer.
		Director, Safety and Assurance Requirements Division.
		Chief, Safety and Mission Assurance Office.
		Director, Mission Support Division.
		Director, National Aeronautics and Space Administration Safety Center.
	Office of the Chief Financial Officer/Comptroller.	Director, Policy Division.
		Director, Quality Assurance.
		Director, Financial Management Division.
		Deputy Chief Financial Officer (Finance).
		Director, Financial and Budget Systems Management Division.
		Director, Budget Division.
	Office of the Chief Information Officer	Associate Chief Information Officer for Technology and Innovation.
		Deputy Chief Information Officer for Information Technology Reform.
		Associate Chief Information Officer for Enterprise Service and Integration Division.
		Associate Chief Information Officer for Capital Planning and Governance.
		Deputy Chief Information Officer for Information Technology Security.
	Office of the Chief Engineer	Chief Engineer, Aeronautics Research Mission Directorate.
	Office International and Interagency Relations.	Deputy Director, Export Control and Interagency Liaison Division.
		Director, Human Exploration and Operations Division.
		Director, Export Control and Interagency Liaison Division.
		Director, Advisory Committee Management Division.
	Office of Legislative and Intergovernmental Affairs.	Deputy Associate Administrator for Legislative Affairs.
	Office of Diversity and Equal Opportunity.	Director, Complaints Management Division.
		Director, Programs, Planning and Evaluation Division.
	Office of Small Business Programs	Associate Administrator, Small Business Programs.
	Johnson Space Center	Associate Director, Commercial Crew Program.
		Special Assistant for Program Integration, Orion.
		Manager, Program Planning and Control.
		Manager, Space Shuttle Transition and Retirement.
		Director, Astro-materials Research and Exploration Science.
		Deputy Manager, Commercial Crew Program.
		Director, External Relations.
		Associate Director, Johnson Space Center.
		Director of Human Resources.
		Chief Financial Officer.
		Chief of Staff, Office of the Director.
		Special Assistant to the Center Director for Organizational Change.
		Chief of Staff, Exploration Planning.
	Space Station Program Office	Manager, Vehicle Office.
		Manager, Avionics and Software Office.

Agency	Organization	Title
		Deputy Manager, International Space Station Program.
		Manager, International Space Station Program.
		Manager, Program Planning and Control Office, International Space Station.
		Manager, International Space Station Payloads Office.
		Manager, Operations Integration.
		Manager, Program Projects Integration.
		Deputy Manager for Utilization.
		Manager, External Integration Office.
		Manager, Program Planning and Control, International Space Station Program.
	Office of Mission Operations	Director, Mission Operations.
		Chief, Engineering Projects.
		Deputy Director, Mission Operations.
	Office of Orion Program	Manager, Crew and Service Module Office.
		Manager, Orion Program.
		Deputy Manager, Orion Program.
		Manager, Vehicle Integration Office.
		Manager, Avionics, Power and Software Office.
	Office of Flight Operations	Strategic Assistant to the Director, Flight Operations.
		Director, Flight Operations.
		Deputy Director, Flight Operations.
		Director, Flight Crew Operations.
		Chief, Aircraft Operations Division.
		Deputy Director, Flight Crew Operations.
		Chief, Flight Director Office.
	Office of Engineering	Associate Director for Commercial Spaceflight.
		Chief, Propulsion and Power Division.
		Chief, Aero science and Flight Mechanics Division.
		Director, Engineering.
		Chief, Software, Robotics and Simulation Division.
		Deputy Director, Engineering.
	Office of Human Health and Performance.	Deputy Director, Human Health and Performance.
		Director, Human Health and Performance.
		Manager, Human Research Program.
	Office of Exploration Integration and Science.	Manager, Extra Vehicular Activity Management Office.
		Director, Performance Management Integration Office.
		Deputy Director, Exploration Integration and Science.
		Director, Strategic Opportunities and Partnership Development.
		Director, Exploration Integration and Science.
		Manager, Strategic Analysis and Integration Office.
	Office of Information Resources	Director, Information Resources.
	Office of Procurement	Director, Office of Procurement.
	Office of Center Operations	Director, Center Operations.
	Office of Safety and Mission Assurance	Assistant to the Director, Safety and Mission Assurance.
		Director, Safety and Mission Assurance.
		Deputy Director, Safety and Mission Assurance.
	White Sands Test Facility	Manager, White Sands Test Facility.
	Kennedy Space Center	Associate Director, Engineering.
		Deputy Director, Technical, Engineering and Technology Directorate.
		21st Century Space Launch Complex Project Manager, Ground Systems Development and Operations Program.
		Director, Engineering.
		Exploration Systems Manager, Ground Systems Development and Operations Program.
		Deputy Director, Engineering.
		Director, International Space Station Ground Processing and Research Project Office.
		Deputy Manager, Ground Processing Development and Operations Program.
		Manager, Ground Systems Development and Operations Program.
		Director, Center Operations Directorate.
		Deputy Manager, Launch Services Program.
		Director, Procurement Office.
		Director, Human Resources.
		Chief Financial Officer.
		Associate Director, John F Kennedy Space Center.
		Director, John F Kennedy Space Center.
		Director, Public Affairs Directorate.
		Chief, Technical Performance and Integration Division, Engineering.

Agency	Organization	Title
		Chief, Mechanical and Structural Division, Engineering.
		Chief, Laboratories and Test Facilities Division, Engineering.
		Chief, Electrical Division, Engineering.
		Director, Ground Processing Directorate.
		Manager, Office of the Chief Engineer, Engineering and Technology Directorate.
		Kennedy Space Center Associate Manager, Commercial Crew Program.
		Manager, Commercial Crew Program.
	Information Technology and Communications Services.	Director, Information Technology and Communications Services.
	Safety and Mission Assurance	Director, Safety and Mission Assurance.
	Launch Services Program	Manager, Launch Services Program.
	Office of the Director	Associate Director, Technical, Marshall Space Flight Center.
	Office of the Deputy Director	Chief Engineer, Exploration Systems Development Division.
		Senior Executive for Technology and Integration.
	Office of the Associate Director	Associate Director, Marshall Space Flight Center.
	Michoud Assembly Facility	Director, Michoud Assembly Facility.
		Deputy Director, Michoud Assembly Facility.
	Engineering Directorate	Deputy Director, Space Systems Department, Engineering Directorate.
		Director, Space Systems Department, Engineering Directorate.
		Director, Materials and Processes Laboratory, Engineering Directorate.
		Director, Propulsion Systems Department, Engineering Directorate.
		Deputy Director, Propulsion Systems Department, Engineering Directorate.
		Director, Test Laboratory, Engineering Directorate.
		Deputy Director, Engineering Directorate.
		Director, Mission Operations Laboratory, Engineering Directorate.
		Director, Spacecraft and Vehicle Systems Department, Engineering Directorate.
		Manager, Chief Engineer's Office, Engineering Directorate.
		Deputy Chief Engineer, Space Launch System Program.
		Chief Engineer, Space Launch System, Engineering Directorate.
		Deputy Director, Spacecraft and Vehicle Systems Department, Engineering Directorate.
		Associate Director for Technical Operations, Engineering Directorate.
		Deputy Manager, Chief Engineer's Office, Engineering Directorate.
		Associate Director for Operations, Engineering Directorate.
	Office of the Chief Financial Officer	Chief Financial Officer.
	Office of Center Operations	Deputy Director, Office of Center Operations.
		Director, Office of Center Operations.
	Office of Procurement	Director, Office of Procurement.
	Safety and Mission Assurance Directorate.	Director, Safety and Mission Assurance Directorate.
		Chief Safety Officer, Safety and Mission Assurance Directorate.
		Deputy Director, Safety and Mission Assurance Directorate.
	Office of Strategic Analysis and Communications.	Director, Office of Strategic Analysis and Communications.
	Space Launch System Program Office	Manager, Engines Office, Space Launch System Program.
		Technical Assistant, Space Launch System Program Office.
		Associate Program Manager, Space Launch System Program Office.
		Manager, Program Planning and Control Office, Space Launch System Program.
		Manager, Space Launch System Program.
		Deputy Manager, Space Launch System Program.
		Manager, Stages Office, Space Launch System Program.
		Manager, Boosters Office, Space Launch System Program.
		Manager, Spacecraft/Payload Integration and Evolution Office, Space Launch System Program.
	Science and Technology Office	Deputy Manager, Science and Technology Office.
		Manager, Science and Technology Office.
	Office of Chief Information Officer	Deputy Director, Enterprise Integration Office, Office of the Chief Information Officer.

Agency	Organization	Title
		Manager, Agency Applications Office.
	Flight Programs and Partnerships Office.	Manager, Flight Programs and Partnerships.
		Deputy Manager, Flight Programs and Partnerships Office.
	Office of Human Capital	Director, Office of Human Capital.
		Special Assistant to Director, Office of Human Capital.
	Stennis Space Center	Director, Projects Directorate.
		Associate Director.
		Deputy Director, Stennis Space Center.
		Director, Engineering and Science Directorate.
		Director, Center Operations Directorate.
		Deputy Director, Engineering and Test Directorate.
		Director, Office of Safety and Mission Assurance.
		Chief Financial Officer.
	Ames Research Center	Procurement Officer.
		Human Capital Director.
		Program Manager for Stratospheric Observatory for Infrared Astronomy (SOFIA).
		Director of Engineering.
		Deputy Director, Exploration Technology.
		Associate Director for Research and Technology.
		Director, New Ventures and Communications Directorate.
		Director, Programs and Projects.
		Chief Information Officer.
		Director, Exploration Technology Directorate.
		Director of Center Operations.
		Chief Financial Officer.
		Deputy Director of Aeronautics.
		Chief, Space Technology Division.
		Deputy Director Ames Research Center.
		Chief, Computational Sciences Division.
		Director of Safety and Mission Assurance.
		Chief Counsel.
	Astrobiology and Space Research	Director of Science.
	Armstrong Flight Research Center	Assistant Director for Strategic Implementation.
		Associate Center Director.
		Director for Mission Information and Test Systems.
		Director for Flight Operations.
		Chief Counsel.
		Director for Safety and Mission Assurance.
		Chief Financial Officer (Financial Manager).
		Director for Programs.
	Langley Research Center	Director, National Aeronautics and Space Administration Engineering and Safety Center.
		Director, Space Technology and Exploration Directorate.
		Chief Financial Officer.
		Director, Safety and Mission Assurance Office.
		Director, Office of Procurement.
		Director, Flight Projects Directorate.
		Deputy Director for Programs.
		Associate Director for Special Programs.
		Director, Office of Strategic Analysis, Communications, and Business Development.
		Associate Director, Langley Research Center.
		Chief Information Officer.
		Deputy Director for Program Development.
		Deputy Director, National Aeronautics and Space Administration Engineering and Safety Center.
		Director, Research Services Directorate.
		Director, Systems Analysis and Advanced Concepts Directorate.
		Director, Science Directorate.
		Director, Aeronautics Research Directorate.
		Director, Center Operations Directorate.
		Deputy Director, Research Directorate.
		Director, Research Directorate.
		Deputy Director, Engineering Directorate.
		Director, Engineering Directorate.
		Manager, Systems Engineering Office.
		Director, Office of Human Capital Management.
		Manager, Management and Technical Support Office.
		Deputy Director, Facilities and Laboratory Operations.
		Senior Advisor for Engineering Development.
		Deputy Director for Safety.
		Director, Earth System Science Pathfinder Program Office.

Agency	Organization	Title
		Special Assistant to the Director.
	Glenn Research Center	Chief, Office of Acquisition.
		Associate Director for Strategy.
		Director, Office of Technology Incubation and Innovation.
		Director, Space Flight Systems Directorate.
		Director, Venture and Partnerships.
		Plum Brook Station Manager.
		Director, Safety and Mission Assurance Directorate.
		Manager, European Service Module Integration Office.
		Director, Office of Human Capital Management.
		Deputy Director, Office of Technology Incubation and Innovation.
		Director of Center Operations.
		Chief Financial Officer.
	Aeronautics Directorate	Director, Aeronautics Directorate.
	Facilities and Test Directorate	Director, Facilities, Test and Manufacturing Directorate.
		Director, Facilities and Test Directorate.
	Deputy Director, Facilities, Test and Manufacturing Directorate.	Deputy Director of Faculties, Test and Manufacturing Directorate.
	Space Flight Systems Directorate	Strategic Capability Manager.
		Deputy Director, Space Flight Systems.
	Engineering Directorate	Chief, Systems Engineering and Analysis Division.
		Director of Engineering.
		Deputy Director of Engineering.
	Research and Engineering Directorate	Chief, Chief Engineer Office.
		Deputy Chief, Materials and Structures Division.
		Deputy Chief, Power Division.
		Chief, Power Division.
		Director, Research and Engineering Directorate.
		Deputy Director, Research and Engineering Directorate.
	Systems Engineering and Architecture Division.	Deputy Chief, Systems Engineering and Architecture Division.
		Chief, Systems Engineering and Architecture Division.
	Materials and Structures Division	Chief, Materials and Structures Division.
	Propulsion Division	Deputy Chief, Propulsion Division.
		Chief, Propulsion Division.
	Communications and Intelligent Systems Division.	Chief, Communications and Intelligent Systems Division.
	Office of the Chief Information Officer	Chief Information Officer.
	National Aeronautics and Space Administration Safety Center.	Director, Audits and Assessments.
		Director, Technical Excellence.
	Goddard Space Flight Center	Assistant Director for Advanced Concepts.
		Deputy Director for Science, Operations and Program Performance.
	Office of Human Resources	Director of Human Capital Management.
	Office of the Comptroller	Deputy Chief Financial Officer.
		Chief Financial Officer/Comptroller.
	Office of Management Operations	Deputy Director of Management Operations.
		Associate Director for Acquisition.
	Office of Flight Assurance	Director of Systems Safety and Mission Assurance.
		Deputy Director of Safety and Mission Assurance.
	Office of Flight Projects	Deputy Director for Planning and Business Management.
		Deputy Director of Flight Projects.
		Director of Flight Projects.
		Associate Director for Astrophysics Projects Division.
		Deputy Associate Director for Earth Science Projects Division.
		Associate Director for Earth Science Technology Office (ESTO).
		Associate Director for Joint Polar Satellite System (JPSS) Program.
		Associate Director for Space Servicing Capabilities Project.
		Associate Director of Flight Projects for James Webb Space Telescope (JWST).
		Associate Director for Exploration and Space Communications Projects Division.
		Associate Director for Earth Science Projects Division.
		Associate Director for Explorers and Heliophysics Projects Division.
	Applied Engineering and Technology Directorate.	Chief, Instrument Systems and Technology Division.
		Chief, Electrical Systems Division.
		Deputy Director of Applied Engineering and Technology for Planning and Business Management.

Agency	Organization	Title
		Chief, Software Engineering Division.
		Deputy Director of Applied Engineering and Technology.
		Chief, Mechanical Systems Division.
		Chief, Mission Engineering and Systems Analysis Division.
		Deputy Director for Technical Management.
	Office of Sciences and Exploration	Director, Heliophysics Science Division.
		Deputy Director for Institutions, Programs, and Business Management.
		Director, Solar System Exploration Division.
		Director of Sciences and Exploration.
		Deputy Director of Sciences and Exploration.
		Director, Astrophysics Science Division.
		Director, Earth Sciences Division.
		Chief, Goddard Institute for Space Studies.
	Suborbital Projects and Operations	Special Assistant for Project Management Training.
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Assistant Inspector General for Auditing.
		Assistant Inspector General for Investigations.
		Assistant Inspector General for Management and Planning.
		Counsel to the Inspector General.
		Deputy Inspector General.
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.	Office of the Archivist of United States and Deputy Archivist of the United States.	Deputy Archivist of the United States.
	Office of General Counsel	General Counsel.
	Congressional Affairs Staff	Director, Congressional and Legislative Affairs.
	Office of the Chief Operating Officer	Chief Operating Officer.
	Agency Services	Director, Records Center Programs.
		Director, Information Security Oversight Office.
		Director, Office of Government Information Services.
		Director, National Declassification Center.
		Chief Records Officer.
		Director, National Personnel Records Center.
		Agency Services Executive.
	Business Support Services	Chief Financial Officer.
		Business Support Services Executive.
	Research Services	Director, Preservation Programs.
		Research Services Executive.
	Office of the Federal Register	Director of the Federal Register.
	Information Services	Director, Information Technology Operations.
		Information Services Executive/Chief Information Officer.
		Chief Technology Officer.
	Legislative Archives, Presidential Libraries and Museum Services.	Legislative Archives, Presidential Libraries and Museum Services Executive.
	Office of Presidential Libraries	Deputy for Presidential Libraries.
	Office of Human Capital	Chief Human Capital Officer.
	Office of Strategy and Communications	Chief Strategy and Communications Officer.
	Office of Innovation	Chief Innovation Officer.
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Inspector General.
NATIONAL CAPITAL PLANNING COMMISSION.	National Capital Planning Commission Staff.	General Counsel.
		Deputy Executive Director.
		Chief Operating Officer.
		Executive Director.
NATIONAL ENDOWMENT FOR THE ARTS.	Office of the Chairman	Chief Information Officer.
		Deputy Chairman for Programs and Partnerships.
		Director, Research and Analysis.
		Deputy Chairman for Management and Budget.
NATIONAL ENDOWMENT FOR THE ARTS OFFICE OF THE INSPECTOR GENERAL.	National Endowment for the Arts, Office of the Inspector General.	Inspector General.
NATIONAL ENDOWMENT FOR THE HUMANITIES.	Office of the Chairman	Assistant Chairman for Planning and Operations.
NATIONAL LABOR RELATIONS BOARD.	Office of the Board Members	Inspector General.
		Chief Information Officer.
		Executive Secretary.
		Deputy Executive Secretary.
	Division of Enforcement Litigation	Deputy Associate General Counsel, Appellate Court Branch.
		Deputy Associate General Counsel, Division of Enforcement Litigation.
		Director, Office of Appeals.
	Division of Advice	Deputy Associate General Counsel, Division of Advice.
		Associate General Counsel, Division of Legal Counsel.

Agency	Organization	Title
	Division of Administration	Deputy Director, Division of Administration.
		Director, Division of Administration.
		Director of Administration.
	Division of Operations Management	Assistant General Counsel (2).
		Assistant to General Counsel (2).
		Deputy Associate General Counsel, Division of Operations-Management.
		Associate General Counsel, Division of Operation-Management.
	Regional Offices	Regional Director, Region 10, Atlanta, Georgia.
		Regional Director, Region 34, Hartford, Connecticut.
		Regional Director, Region 31, Los Angeles, California.
		Regional Director, Region 32, Oakland, California.
		Regional Director, Region 30, Milwaukee, Wisconsin.
		Regional Director, Region 29, Brooklyn, New York.
		Regional Director, Region 28, Phoenix, Arizona.
		Regional Director, Region 27, Denver, Colorado.
		Regional Director, Region 26, Memphis, Tennessee.
		Regional Director, Region 25, Indianapolis, Indiana.
		Regional Director, Region 24, Hato Rey, Puerto Rico.
		Regional Director, Region 22, Newark, New Jersey.
		Regional Director, Region 21, Los Angeles, California.
		Regional Director, Region 20, San Francisco, California.
		Regional Director, Region 19, Seattle, Washington.
		Regional Director, Region 18, Minneapolis, Minnesota.
		Regional Director, Region 17, Kansas City, Kansas.
		Regional Director, Region 16, Fort Worth, Texas.
		Regional Director, Region 15, New Orleans, Louisiana.
		Regional Director, Region 14, Saint Louis, Missouri.
		Regional Director, Region 13, Chicago, Illinois.
		Regional Director, Region 12, Tampa, Florida.
		Regional Director, Region 11, Winston Salem, North Carolina.
		Regional Director, Region 7, Detroit, Michigan.
		Regional Director, Region 8, Cleveland, Ohio.
		Regional Director, Region 1, Boston, Massachusetts.
		Regional Director Region 2, New York.
		Regional Director, Region 3, Buffalo, New York.
		Regional Director, Region 4, Philadelphia, Pennsylvania.
		Regional Director, Region 9, Cincinnati, Ohio.
		Regional Director, Region 6, Pittsburgh, Pennsylvania.
		Regional Director, Region 5, Baltimore, Maryland.
NATIONAL SCIENCE FOUNDATION	Office of the Director	Chief Technology Officer.
	Office of Integrative Activities	Senior Advisor (2).
	Office of Diversity and Inclusion	Office Head, Office of Diversity and Inclusion (2).
	Office of the General Counsel	Deputy General Counsel.
	Directorate for Geosciences	Deputy Assistant Director.
	Division of Atmospheric and Geospace Sciences.	Section Head, National Center for Atmospheric Research (NCAR)/Facilities Section.
	Division of Earth Sciences	Head, Deep Earth Processes Section.
	Division of Ocean Sciences	Section Head, Integrative Programs Section.
	Division of Polar Programs	Head, Section for Antarctic Infrastructure and Logistic.
	Division of Engineering Education and Centers.	Deputy Division Director (2).
	Division of Civil, Mechanical, and Manufacturing Innovation.	Deputy Division Director.
	Division of Industrial Innovation and Partnerships.	Deputy Division Director.
		Senior Advisor.
	Division of Chemical, Bioengineering, Environmental, and Transport Systems.	Deputy Division Director (2).
	Division of Electrical, Communication and Cyber Systems.	Deputy Division Director.
	Directorate for Biological Sciences	Deputy Assistant Director.
	Division of Environmental Biology	Deputy Division Director.
	Division of Integrative Organismal Systems.	Deputy Division Director.
	Directorate for Mathematical and Physical Sciences.	Senior Science Associate.
		Deputy Assistant Director.
		Senior Advisor.
	Division of Astronomical Sciences	Deputy Division Director.
	Division of Mathematical Sciences	Deputy Division Director.
	Division of Materials Research	Deputy Division Director.

Agency	Organization	Title
	Division of Research on Learning In Formal and Informal Settings.	Senior Advisor for Research.
	Directorate for Social, Behavioral and Economic Sciences.	Deputy Assistant Director.
	National Center for Science and Engineering Statistics.	Division Director.
	Directorate for Computer and Information Science and Engineering.	Deputy Assistant Director.
	Office of Budget, Finance and Award Management.	Deputy Office Head.
		Director, Budget, Finance and Award and Chief Financial Officer.
		Deputy Director, Planning, Coordination and Analysis.
	Budget Division	Deputy Director.
		Division Director.
	Division of Financial Management	Division Director and Deputy Chief Financial Officer.
		Deputy Division Director, Division of Financial Management.
	Division of Grants and Agreements	Division Director.
	Division of Acquisition and Cooperative Support.	Division Director.
	Division of Institutional and Award Support.	Division Director.
		Deputy Division Director.
	Office of Information and Resource Management.	Deputy Director.
		Head, Office of Information and Resource Management and Chief Human Capital Officer.
		Senior Staff Associate.
		Deputy Office Head.
	Division of Information Systems	Deputy Division Director.
	Division of Human Resource Management.	Deputy Division Director.
		Division Director.
	Division of Administrative Services	Deputy Division Director.
		Division Director.
NATIONAL SCIENCE FOUNDATION, OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Assistant Inspector General for Audit/Chief Information Officer to Office of Inspector General.
		Assistant Inspector General for Management, Legal and External Affairs.
		Inspector General.
		Deputy Inspector General.
		Assistant Inspector General for Investigations.
NATIONAL TRANSPORTATION SAFETY BOARD.	Office of the Managing Director	Deputy Managing Director (2).
	Office of Administration	Director, Office of Administration.
	Office of Aviation Safety	Director Bureau of Accident Investigation.
		Deputy Director, Office of Aviation Safety.
		Deputy Director, Regional Operations.
	Office of Research and Engineering	Director Office of Research and Engineering.
		Deputy Director Office of Research and Engineering.
	Office of Chief Financial Officer	Chief Financial Officer.
	Office of Railroad, Pipeline and Hazardous Materials Investigations.	Deputy Director, Office of Railroad, Pipeline and Hazardous Materials Safety.
		Director, Office of Railroad, Pipeline and Hazardous Materials Investigations.
	Office of Safety Recommendations and Communications.	Deputy Director, Office of Safety Recommendations and Communications.
	Office of Highway Safety	Director, Office of Highway Safety.
	Office of Chief Information Officer	Chief Information Officer.
	Office of Marine Safety	Director, Office of Marine Safety.
NUCLEAR REGULATORY COMMISSION.	Office of the Chief Financial Officer	Budget Director.
		Deputy Chief Financial Officer.
		Controller.
	Office of Commission Appellate Adjudication.	Director, Office of Commission Appellate Adjudication.
	Office of the Executive Director for Operations.	Senior Advisor.
		Executive Director for Transition.
	Office of the Chief Information Officer	Director, Information Security Directorate.
		Director, Customer Service Division.
		Director, Solutions Development Division.
		Director, Operations Division.
		Director, Information Technology/Information Management Portfolio Management and Planning Division.
		Director of Integration Strategies.
	Office of Administration	Director, Division of Facilities and Security.
		Director, Division of Administrative Services.
		Director, Acquisition Management Division.
		Deputy Director, Office of Administration.

Agency	Organization	Title
		Associate Director for Space Planning and Consolidation.
	Office of Nuclear Security and Incident Response.	Deputy Director, Office of Nuclear Security and Incident Response.
	Division of Security Policy	Deputy Director, Division of Security Policy.
		Director, Division of Security Policy.
	Division of Preparedness and Response.	Deputy Director, Division of Preparedness and Response.
		Director, Division of Preparedness and Response.
	Division of Security Operations	Deputy Director, Division of Security Operations.
		Director, Division of Security Operations.
	Cyber Security Directorate	Director, Cyber Security Directorate.
	Office of Small Business and Civil Rights.	Director, Office of Small Business and Civil Rights.
	Office of New Reactors	Deputy Director, Office of New Reactors.
	Division of New Reactor Licensing	Director, Division of New Reactor Licensing.
		Deputy Director, Division of New Reactor Licensing.
	Division of Site Safety and Environmental Analysis.	Deputy Director, Division of Site Safety and Environmental Analysis (2).
		Director, Division of Site Safety and Environmental Analysis.
	Division of Engineering, Infrastructure, and Advanced Reactors.	Director, Division of Engineering, Infrastructure, and Advanced Reactors.
		Deputy Director, Division of Engineering, Infrastructure, and Advanced Reactors (2).
	Division of Safety Systems and Risk Assessment.	Director, Division of Safety Systems and Risk Assessment.
		Deputy Director, Division of Safety Systems and Risk Assessment.
	Division of Engineering	Director, Division of Engineering.
	Division of Construction Inspection and Operational Programs.	Deputy Director, Division of Construction Inspection and Operational Programs.
		Director, Division of Construction Inspection and Operational Programs.
	Office of Nuclear Reactor Regulation	Deputy Director for Engineering.
		Director, Japan Lessons Learned Project Directorate.
		Deputy Director for Reactor Safety Programs and Corporate Support.
	Division of Safety Systems	Director, Division of Safety Systems.
		Deputy Director, Division of Safety Systems.
	Division of Engineering	Director, Division of Engineering.
		Deputy Director, Division of Engineering.
	Division of Risk Assessment	Deputy Director, Division of Risk Assessment.
		Director, Division of Risk Assessment.
	Division of License Renewal	Deputy Director, Division of License Renewal.
		Director, Division of License Renewal.
	Division of Operating Reactor Licensing	Director, Division of Operating Reactor Licensing.
		Deputy Director, Division of Operating Reactor Licensing (2).
	Division of Inspection and Regional Support.	Director, Division of Inspection and Regional Support.
		Deputy Director, Division of Inspection and Regional Support.
	Division of Policy and Rulemaking	Deputy Director, Division of Policy and Rulemaking (2).
		Director, Division of Policy and Rulemaking.
	Office of Nuclear Material Safety and Safeguards.	Special Assistant.
	Division of Fuel Cycle Safety, Safeguards, and Environmental Review.	Deputy Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review.
		Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review.
	Yucca Mountain Directorate	Director, Yucca Mountain Directorate.
	Division of Spent Fuel Management	Director, Division of Spent Fuel Management.
		Deputy Director, Division of Spent Fuel Management.
	Division of Materials Safety, States, Tribal, and Rulemaking Programs.	Deputy Director, Division of Materials Safety, State, Tribal, and Rulemaking Programs.
		Director, Division of Materials Safety, State, Tribal, and Rulemaking Programs.
	Division of Decommissioning, Uranium Recovery, and Waste Programs.	Deputy Director, Environmental Protection and Performance Assessment Directorate.
		Deputy Director, Division of Decommissioning, Uranium Recovery, and Waste Programs.
		Director, Division of Decommissioning, Uranium Recovery, and Waste Programs.
	Division of Engineering	Deputy Director, Division of Engineering.
		Director, Division of Engineering.
	Division of Systems Analysis	Director, Division of Systems Analysis.
		Deputy Director, Division of Systems Analysis.

Agency	Organization	Title
	Division of Risk Analysis	Deputy Director, Division of Risk Analysis.
		Director, Division of Risk Analysis.
	Region I	Deputy Regional Administrator.
		Director, Division of Reactor Projects.
		Director Division of Reactor Safety.
		Deputy Director, Division of Reactor Safety.
		Director, Division of Nuclear Materials Safety.
		Deputy Director, Division of Reactor Projects.
	Region II	Deputy Director, Division of Reactor Safety.
		Deputy Director, Division of Fuel Facility Inspection.
		Deputy Director, Division of Construction Inspection.
		Director, Division of Construction Inspection.
		Deputy Director, Division of Construction Projects.
		Director, Division of Fuel Facility Inspection.
		Deputy Regional Administrator for Construction.
		Director, Division of Reactor Safety.
		Deputy Regional Administrator for Operations.
		Director, Division of Reactor Projects.
		Deputy Director, Division of Reactor Projects.
		Director, Division of Construction Projects.
	Region III	Deputy Regional Administrator.
		Director, Division of Reactor Projects.
		Director, Division of Reactor Safety.
		Deputy Director, Division of Reactor Projects.
		Deputy Director, Division of Reactor Safety.
		Director, Division of Nuclear Materials Safety.
	Region IV	Deputy Director, Division of Reactor Projects.
		Deputy Regional Administrator.
		Deputy Director, Division of Reactor Safety.
		Director Division of Reactor Projects.
		Director, Division of Reactor Safety.
		Director, Division of Nuclear Materials Safety.
NUCLEAR REGULATORY COMMISSION, OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Deputy Inspector General.
	Office of the Assistant Inspector General for Audits.	Assistant Inspector General for Audits.
	Office of the Assistant Inspector General for Investigations.	Assistant Inspector General for Investigations.
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.	Office of the Executive Director	Executive Director.
OFFICE OF GOVERNMENT ETHICS	Office of the Director	Deputy Director for Financial Disclosure.
		Deputy Director for Internal Operations Division.
		Supervisory Attorney Advisor.
		Deputy Director for Compliance.
OFFICE OF MANAGEMENT AND BUDGET.	Staff Offices	Deputy Assistant Director for Management.
		Deputy Associate Director for Economic Policy.
		Assistant Director for Management and Operations.
		Associate Director for Management and Operations.
	Legislative Reference Division	Chief, Resources-Defense-International Branch.
		Chief, Labor, Welfare, Personnel Branch.
		Assistant Director Legislative Reference.
		Chief, Economics, Science and Government Branch.
	Office of Federal Procurement Policy	Deputy Administrator for Federal Procurement Policy.
		Associate Administrator.
	Office of Information and Regulatory Affairs.	Chief, Natural Resources and Environment Branch.
		Chief, Information Policy Branch.
		Chief, Food, Health and Labor Branch.
		Chief, Statistical Policy Branch.
	Office of E-Government and Information Technology.	Chief Architect.
		Deputy Administrator for E-Government and Information Technology.
	Office of Federal Financial Management.	Chief, Accountability, Performance, and Reporting Branch.
	Office of Budget Review	Assistant Director for Budget Review.
		Chief, Budget Review Branch.
		Deputy Chief, Budget Analysis Branch.
		Chief, Budget Systems Branch.
		Chief, Budget Analysis Branch.
		Deputy Chief, Budget Review Branch.
		Deputy Assistant Director for Budget Review.
		Chief, Budget Concepts Branch.
	International Affairs Division	Deputy Associate Director for International Affairs.
		Chief, State/United States Information Agency Branch.
		Chief, Economic Affairs Branch.
	National Security Division	Chief, Veterans Affairs and Defense Health Branch.

Agency	Organization	Title
		Chief, Command, Control, Communication, Computers, and Intelligence Branch.
		Chief, Force Structure and Investment Branch.
		Deputy Associate Director for National Security.
		Chief, Operations and Support Branch.
	Human Resource Programs	Deputy Associate Director for Education, Income Maintenance and Labor.
		Chief, Education Branch.
		Chief, Labor Branch.
		Chief, Income Maintenance Branch.
	Health Division	Chief, Public Health Branch.
		Chief, Health and Human Services Branch.
		Deputy Associate Director for Health.
		Chief, Medicare Branch.
		Chief, Medicaid Branch.
		Chief, Health Insurance and Data Analysis Branch.
	Transportation, Homeland, Justice and Services Division.	Chief, Homeland Security Branch.
		Chief, Justice Branch.
		Chief, Transportation/General Services Administration Branch.
		Deputy Associate Director, Transportation, Homeland, Justice and Services.
		Chief, Transportation Branch.
	Housing, Treasury and Commerce Division.	Chief, Housing Branch.
		Chief, Treasury Branch.
		Deputy Associate Director for Housing, Treasury and Commerce.
		Chief, Commerce Branch.
	Natural Resources Division	Deputy Associate Director for Natural Resources.
		Chief, Agricultural Branch.
		Chief, Environment Branch.
		Chief, Interior Branch.
	Energy, Science and Water Division	Chief, Water and Power Branch.
		Chief, Energy Branch.
		Deputy Associate Director for Energy, Science, and Water Division.
		Chief, Science and Space Programs Branch.
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of Supply Reduction	Assistant Deputy Director of Supply Reduction.
		Associate Director for Intelligence.
OFFICE OF PERSONNEL MANAGEMENT.	Office of Planning and Policy Analysis	Deputy Director, Actuary.
	Office of Facilities, Security and Emergency Management.	Director, Facilities, Security and Emergency Management.
	Office of Healthcare and Insurance	Assistant Director, Federal Employee Insurance Operations.
	Office of Retirement Services	Associate Director, Retirement Services.
		Deputy Associate Director, Retirement Services.
		Deputy Associate Director, Retirement Operations.
	Merit System Audit and Compliance	Deputy Associate Director, Merit System Audit and Compliance.
	Office of Federal Investigative Services	Deputy Associate Director, Operations.
	Office of the Chief Financial Officer	Deputy Chief Financial Officer.
		Associate Chief Financial Officer, Financial Services.
		Chief Financial Officer.
	Office of Chief Information Officer	Chief Information Officer.
	Office of Procurement Operations	Director, Office of Procurement Operations.
OFFICE OF PERSONNEL MANAGEMENT OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Deputy Inspector General.
	Office of Investigations	Deputy Assistant Inspector General for Investigations.
		Assistant Inspector General for Investigations.
	Office of Audits	Assistant Inspector General for Audits.
		Deputy Assistant Inspector General for Audits.
		Senior Advisor to the Assistant Inspector General for Audits.
		Deputy Assistant Inspector General for Audits.
	Office of Legal Affairs	Assistant Inspector General for Legal Affairs.
	Office of Policy, Resources Management, and Oversight.	Assistant Inspector General for Management.
		Chief Information Technology Officer.
OFFICE OF SPECIAL COUNSEL	Headquarters, Office of Special Counsel.	Associate Special Counsel for Investigation and Prosecution.
		Chief Financial Officer and Director of Administrative Services.
		Director, Office of Planning and Analysis.
		Associate Special Counsel for Investigation and Prosecution.
		Director of Management and Budget.

Agency	Organization	Title
		Associate Special Counsel Planning and Oversight.
		Associate Special Counsel for Legal Counsel and Policy.
		Associate Special Counsel for Investigation and Prosecution.
		Senior Associate Special Counsel for Investigation and Prosecution.
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.	Office of the U.S. Trade Representative	Assistant United States Trade Representative for Labor.
	Office of Industry, Market Access and Telecommunications.	Assistant United States Trade Representative for Industry, Market Access and Telecommunications.
	Office of South Asian Affairs	Assistant United States Trade Representative for South Asian Affairs.
RAILROAD RETIREMENT BOARD	Board Staff	Director of Policy and Systems.
		Director of Operations.
		Director of Fiscal Operations.
		Chief Information Officer.
		Director of Programs.
		General Counsel.
		Chief Financial Officer.
		Deputy General Counsel.
		Director of Administration.
		Director of Field Service.
		Chief Actuary.
		Director of Hearings and Appeals.
		Chief of Technology Service.
	Office of Inspector General	Assistant Inspector General for Audit.
		Assistant Inspector General for Investigations.
SELECTIVE SERVICE SYSTEM	Office of the Director	Associate Director for Operations (2).
		Senior Advisor to the Director.
SMALL BUSINESS ADMINISTRATION	Office of the General Counsel	Associate General Counsel for General Law.
		Associate General Counsel, Litigation.
		Associate General Counsel for Procurement Law.
		Associate General Counsel for Financial Law and Lender Oversight.
	Office of Field Operations	District Director (4).
		District Director Washington Metro Area District Office.
		District Director New York.
	Office of Hearings and Appeals	Assistant Administrator for Hearings and Appeals.
	Office of the Chief Financial Officer	Associate Administrator for Performance Management and Chief Financial Officer.
		Deputy Chief Financial Officer.
	Office of Capital Access	Director of Economic Opportunity.
	Office of Surety Guarantees	Director for Surety Bonds and Guarantees Programs.
	Office of Investment and Innovation	Deputy Associate Administrator for Investment and Innovation.
	Office of Entrepreneurial Development	Associate Administrator for Small Business Development Centers.
		Deputy Associate Administrator for Entrepreneurial Development.
	Office of Human Resources Solutions	Deputy Chief Human Capital Officer.
		Deputy Chief Operating Officer/Chief Human Capital Officer.
	Office of the Chief Information Officer	Deputy Chief Information Officer.
	Office of Government Contracting and Business Development.	Director for Policy Planning and Liaison.
	Office of Hub zone Empowerment Contracting.	Director of Hub zone.
	Office of Business Development	Associate Administrator for Business Development.
SMALL BUSINESS ADMINISTRATION, OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Assistant Inspector General for Management and Policy.
		Assistant Inspector General for Auditing Division.
		Assistant Inspector General for Investigations.
		Deputy Inspector General.
		Counsel to the Inspector General.
SOCIAL SECURITY ADMINISTRATION	Office of the Chief Strategic Officer	Chief Strategic Officer.
	Office of Disability Adjudication and Review.	Deputy Commissioner for Disability Adjudication and Review.
		Assistant Deputy Commissioner for Disability Adjudication and Review.
	Office of Appellate Operations	Executive Director, Office of Appellate Operations.
		Deputy Executive Director, Office of Appellate Operations.
	Office of Medical and Vocational Expertise.	Associate Commissioner for Medical and Vocational Expertise.
	Office of the Chief Actuary	Chief Actuary.
		Deputy Chief Actuary (Long-Range).

Agency	Organization	Title
		Deputy Chief Actuary (Short-Range).
	Office of Disability Determinations	Associate Commissioner for Disability Determinations.
	Office of Personnel	Deputy Associate Commissioner for Personnel.
		Associate Commissioner for Personnel.
	Office of Civil Rights and Equal Opportunity.	Deputy Associate Commissioner for Civil Rights and Equal Opportunity.
		Associate Commissioner for Civil Rights and Equal Opportunity.
	Office of Labor-Management and Employee Relations.	Associate Commissioner for Labor-Management and Employee Relations.
		Deputy Associate Commissioner for Labor-Management and Employee Relations.
	Office of Budget, Finance, Quality and Management.	Assistant Deputy Commissioner for Budget, Finance, Quality, and Management.
	Office of Financial Policy and Operations.	Associate Commissioner, Office of Finance Policy and Operations.
		Deputy Associate Commissioner, Financial Policy and Operations.
	Office of Budget	Associate Commissioner for Budget.
		Deputy Associate Commissioner for Budget.
	Office of Acquisition and Grants	Associate Commissioner for Acquisition and Grants.
		Deputy Associate Commissioner for Acquisition and Grants.
	Office of Anti-Fraud Programs	Associate Commissioner for Anti-Fraud Programs.
	Office of Systems	Assistant Deputy Commissioner for Systems (Business Support).
	Office of Telecommunications and Systems Operations.	Deputy Associate Commissioner for Telecommunications and Systems Operations.
		Deputy Associate Commissioner for Telecommunications and Systems Operations (Telecommunications).
		Associate Commissioner for Telecommunications and Systems Operations.
		Assistant Associate Commissioner for Enterprise Information Technology Services Management.
	Office of Information Security	Associate Commissioner for Information Security.
	Office of General Law	Associate General Counsel for General Law.
		Deputy Associate General Counsel for General Law.
	Office of Program Law	Deputy Associate General Counsel for Program Law.
	Office of Privacy and Disclosure	Executive Director for Privacy and Disclosure.
SOCIAL SECURITY ADMINISTRATION, OFFICE OF THE INSPECTOR GENERAL.	Immediate Office of the Inspector General.	Deputy Inspector General.
	Office of Counsel to the Inspector General.	Counsel to the Inspector General.
	Office of External Relations	Assistant Inspector General for External Relations (2).
	Office of Audit	Assistant Inspector General for Audit.
		Deputy Assistant Inspector General for Audit (Financial Systems and Operations Audits).
		Deputy Assistant Inspector General for Audit (Program Audit and Evaluations).
	Office of Investigations	Assistant Inspector General for Investigations.
		Deputy Assistant Inspector General for Investigations (Western Field Operations).
		Deputy Assistant Inspector General for Investigations (Eastern Field Operations).
	Office of Communications and Resource Management.	Deputy Assistant Inspector General for Communications and Resource Management.
		Assistant Inspector General for Communications and Resource Management.
DEPARTMENT OF STATE	Office of Civil Rights	Deputy Director.
	Office of the Under Secretary for Management.	Ombudsman.
	Bureau of Administration	Director, Office of Acquisitions.
		Procurement Executive.
	Bureau of Human Resources	Principal Deputy Assistant Secretary.
		Human Resources Officer.
	Bureau of International Security and Nonproliferation.	Office Director (2).
	Bureau of Arms Control, Verification, and Compliance.	Director, Office of Strategic Negotiations and Implementation.
DEPARTMENT OF STATE, OFFICE OF THE INSPECTOR GENERAL.	Office of Inspector General	Assistant Inspector General for Inspections.
		Deputy Assistant Inspector General for Management.
		Assistant Inspector General for Evaluations and Special Projects.
		Deputy Assistant Inspector General for Inspections.
		Deputy General Counsel.

Agency	Organization	Title
		Assistant Inspector General for Management.
		Coordinator for Overseas Contingency Operations.
		Deputy Assistant Inspector General for Middle East Regional Office.
		Deputy Assistant Inspector General for Investigations.
		Deputy Assistant Inspector General for Audits.
		Assistant Inspector General for Audits.
		Assistant Inspector General for Investigations.
		General Counsel to the Inspector General.
		Deputy Inspector General.
TRADE AND DEVELOPMENT AGENCY	Office of the Director	Assistant Director for Policy and Programs.
		Deputy Director.
	Office of the General Counsel	General Counsel.
DEPARTMENT OF TRANSPORTATION	Office of the Secretary	Executive Director for the Office of the Under Secretary of Transportation for Policy.
		Senior Advisor.
	Office of Intelligence, Security and Emergency Response.	Deputy Director.
		Director, Office of Intelligence, Security and Emergency Response.
	Office of Chief Information Officer	Chief Information Security Officer.
		Chief Technology Officer.
		Deputy Chief Information Officer.
	Office of Safety, Energy and Environment.	Director.
	Office of Assistant Secretary for Budget and Programs.	Deputy Chief Financial Officer.
		Deputy Assistant Secretary for Budget and Programs.
		Chief Financial Officer.
	Office of Budget and Program Performance.	Director of Budget and Program Performance.
	Office of Assistant Secretary for Administration.	Deputy Assistant Secretary for Administration.
	Office of the Senior Procurement Executive.	Senior Procurement Executive.
	Office of the Administrator	Executive Director (4).
		Chief Financial Officer (2).
		Executive Secretary, Committee on Marine Transportation Systems.
		Assistant Administrator/Chief Safety Officer.
	Office of the Associate Administrator for Railroad Safety.	Associate Administrator for Railroad Safety/Chief Safety Officer.
	Office of the Chief Counsel	Deputy Chief Counsel.
	Office of the Associate Administrator for Strategic Sealift.	Deputy Associate Administrator for Federal Sealift.
		Deputy Associate Administrator for Maritime Education and Training.
	Office of the Associate Administrator for Environment and Compliance.	Associate Administrator for Environment and Compliance.
		Deputy Associate Administrator for Environment and Compliance.
		Director of Innovative Program Delivery.
	Office of the Chief Financial Officer	Deputy Chief Financial Officer and Chief Budget Officer.
		Director, Office of Acquisition Management.
		Chief Financial Officer.
	Office of Real Estate Services	Director, Office of Real Estate Services.
	Office of the Associate Administrator for Safety.	Associate Administrator for Safety.
	Office of Safety Research and Development.	Director, Office of Safety Research, Development and Technology.
	Office of Licensing and Safety Information.	Director, Office for Licensing and Safety Information.
	Office of Bus and Truck Standards and Operations.	Director, Office of Bus and Truck Standards and Operations.
	Office of Enforcement and Compliance	Director, Office of Enforcement and Compliance.
	Office of the Associate Administrator for Injury Control Operations and Resources.	Associate Administrator for Injury Control Operations and Resources.
	Office of the Associate Administrator for Enforcement.	Associate Administrator for Enforcement.
		Director, Office of Vehicle Safety Compliance.
		Director, Office of Defects Investigation.
	Office of Proceedings	Deputy Director—Legal Analysis.
	Office of the Managing Director	Managing Director.
	Immediate Office of the Administrator	Staff Director.
	Office of Chief Safety Officer	Assistant Administrator and Chief Safety Officer.
	Office of Pipeline Safety	Deputy Associate Administrator for Policy and Programs.
		Deputy Associate Administrator for Field Operations.
		Associate Administrator for Pipeline Safety.

Agency	Organization	Title
	Office of Hazardous Materials Safety	Associate Administrator for Hazardous Materials Safety.
DEPARTMENT OF TRANSPORTATION, OFFICE OF THE INSPECTOR GENERAL.	Office of the Deputy Inspector General	Deputy Inspector General.
	Office of Auditing and Evaluation	Principal Assistant Inspector General for Auditing and Evaluation.
		Deputy Principal Assistant Inspector General for Auditing and Evaluating.
		Principal Assistant Inspector General for Auditing and Evaluation.
	Office of Financial and Information Technology Audits.	Assistant Inspector General for Financial and Information Technology Audits.
	Office of Acquisition and Procurement Audits.	Assistant Inspector General for Acquisition and Procurement Audits.
	Office of Aviation Audits	Assistant Inspector General for Aviation Audits (2).
	Office of Surface Transportation Audits	Assistant Inspector General for Surface Transportation Audits.
	Office of the Principal Assistant Inspector General for Investigations.	Principal Assistant Inspector General for Investigations.
	Office of Assistant Inspector General for Investigations.	Deputy Assistant Inspector General for Investigations.
	Office of Administration	Assistant Inspector General for Administration.
	Office of Legal, Legislative and External Affairs.	Assistant Inspector General for Legal, Legislative and External Affairs.
	Office of Surface Transportation Audits	Assistant Inspector General for Surface Transportation Audits.
	Office of Aviation Audits	Assistant Inspector General for Aviation Audits.
DEPARTMENT OF THE TREASURY	Office of the Secretary of the Treasury	Director, Office of Small and Disadvantaged Business Utilization.
	Office of the Under Secretary for Domestic Finance.	Director of Policy.
	Office of the Fiscal Assistant Secretary	Fiscal Assistant Secretary.
		Deputy Assistant Secretary (Accounting Policy).
		Deputy Assistant Secretary for Fiscal Operations and Policy.
	Bureau of the Fiscal Service	Director, Regional Financial Center (Philadelphia).
		Director, Regional Financial Center (Kansas City).
		Deputy Assistant Commissioner (Debt Management Services).
		Assistant Commissioner, Governmentwide Accounting.
		Assistant Commissioner (Public Debt Accounting).
		Assistant Commissioner, Debt Management Services.
		Assistant Commissioner, Federal Finance.
		Director, Revenue Collection Group.
		Assistant Commissioner, Management (Chief Financial Officer).
		Executive Director, Government Securities Regulations.
		Director, Regional Financial Center (San Francisco).
		Assistant Commissioner (Financing).
		Executive Director (Administrative Resource Center).
		Director, Debt Management Services Operations, East.
		Executive Director (Myra).
		Executive Director (Do Not Pay Business Center Staff).
		Deputy Assistant Commissioner, Compliance and Reporting Group.
		Deputy Assistant Commissioner (Shared Services).
		Assistant Commissioner, Information and Security Services (Chief Information Officer).
		Deputy Assistant Commissioner (Fiscal Accounting Operations).
		Deputy Assistant Commissioner for Information Services.
		Commissioner, Bureau of the Fiscal Service.
		Deputy Commissioner, Financial Services and Operations.
		Deputy Commissioner, Finance and Administration.
		Deputy Commissioner, Accounting and Shared Services.
		Director, Debt Management Services Operations, West.
		Deputy Assistant Commissioner, Office of Retail Securities.
		Deputy Assistant Commissioner, Payment Management.
		Director, Cash Management Infrastructure Group.
		Assistant Commissioner, Payment Management.
		Deputy Assistant Commissioner for Infrastructure and Operations (Office of Information and Security Services).
		Deputy Assistant Commissioner for Program Solutions and Support (Treasury Securities Services).
		Deputy Assistant Commissioner, Governmentwide Accounting.

Agency	Organization	Title
		Assistant Commissioner (Office of Management Services).
		Deputy Chief Information Officer.
	Bureau of the Public Debt	Deputy Executive Director, Administrative Resources Center.
	Office of the Assistant Secretary for Financial Markets.	Director, Capital Markets.
	Office of the Assistant Secretary for Financial Institutions.	Deputy Director, Federal Insurance Office.
		Director, Federal Insurance Office.
	Office of the Assistant Secretary for Terrorist Financing.	Director, Executive Office for Asset Forfeiture.
	Financial Crimes Enforcement Network	Associate Director, Technology Solutions and Services Division/Chief Information Officer.
		Associate Director, Regulatory Policy and Programs Division.
		Associate Director, Liaison Division.
		Deputy Director.
		Director, Financial Crimes Enforcement Network.
		Chief Counsel, Financial Crimes Enforcement Network.
		Associate Director, Policy Division.
		Associate Director, Enforcement Division.
		Associate Director, Intelligence Division.
		Executive Advisor.
		Deputy Associate Director, Compliance and Enforcement Programs.
		Associate Director, International.
		Associate Director, Management Programs Division.
	Office of the Assistant Secretary for Intelligence and Analysis.	Deputy Assistant Secretary for Security.
	Office of the General Counsel	Special Counsel, Asset Forfeiture.
	Office of the Assistant Secretary (Tax Policy).	Director, Economic Modeling and Computer Applications.
	Alcohol and Tobacco Tax and Trade Bureau.	Assistant Administrator Information Resources/Chief Information Officer.
		Deputy Administrator, Alcohol and Tobacco Tax and Trade Bureau.
		Assistant Administrator, Field Operations.
		Administrator, Alcohol and Tobacco Tax and Trade Bureau.
		Assistant Administrator, Management/Chief Financial Officer.
		Assistant Administrator, Headquarter Operations.
	Office of the Assistant Secretary for Management.	Director Office of Minority and Women Inclusion.
		Director, Office of Procurement.
		Deputy Chief Financial Officer.
	Internal Revenue Service	Director, Strategy and Finance, Appeals.
		Director, Strategy and Finance.
		Deputy Chief, Appeals.
		Director, Business Systems Planning—Large and Mid-Size Business.
		Industry Director—Financial Services—Large and Mid-Size Business.
		Director, Equal Employment Opportunity and Diversity.
		Director, Tax Exempt Bonds.
		Director, Government Entities.
		Accounts Management Field Director, Austin—Wage and Investment.
		Deputy Director, Submission Processing.
		Deputy Division Commissioner, Tax Exempt and Government Entities.
		Executive Director, Office of Equity, Diversity, and Inclusion.
		National Director of Appeals.
		Director, Research, Analysis and Statistics of Income.
		Director, Field Assistance—Wage and Investment.
		Director, Strategy and Finance—Wage and Investment.
		Director, Communication, Assistance, Research and Education.
		Director, Customer Account Services—Wage and Investment.
		Director, Submission Processing (Cincinnati)—Wage and Investment.
		Accounts Management Field Director—Andover.
		Deputy National Taxpayer Advocate.
		Commissioner, Tax Exempt and Government Entities Division.

Agency	Organization	Title
		Chief, Management and Finance—Large and Mid-Size Business.
		Director, Exempt Organizations.
		Director, Human Resources—Wage and Investment.
		Director, Employee Plans.
		Director, Communications, Technology and Media Industry—Large and Mid-Size Business.
		Director, Field Operations, Communications, Technology and Media—Northwest.
		Special Agent In Charge, Los Angeles.
		Commissioner, Wage and Investment.
		Director, Human Resources—Small Business and Self Employed.
		Director, Real Estate and Facilities Management.
		Director of Research.
		Director, Operations.
		Director, Exempt Organizations, Rulings and Agreements.
		Director of Compliance, Atlanta—Wage and Investment.
		Director, Procurement.
		Director, Media and Publications.
		Director, Internet Development Services.
		Director, Statistics of Income.
		Associate Chief Financial Officer for Internal Financial Management—National Headquarters.
		Director, Pre-Filing and Technical Guidance.
		Associate Chief Information Officer, Cybersecurity.
		Project Director.
		Accounts Management Field Director.
		Director, Information Technology Security Engineering.
		Director, Field Operations.
		Director, Office of Communications.
		Director, Whistleblower Office.
		Director, Portal Program Management.
		Special Agent In Charge.
		Director, Reporting Compliance.
		Deputy Commissioner, Services and Enforcement.
		Director, Enterprise Systems Testing.
		Director, Corporate Data.
		Director, Internal Management.
		Director, Submission Processing.
		Deputy Director, Submission Processing.
		Business Modernization Executive.
		Deputy Commissioner, Large and Mid-Size Business, International.
		Industry Director, Natural Resources and Construction.
		Director, Examination Planning and Delivery.
		Director, Workforce Progression and Management.
		Director, Customer Relationship and Integration.
		Director, Research.
		Director, Communications and Stakeholder Outreach.
		Director, Data Management.
		Deputy Director, Accounts Management.
		Chief, Agency-Wide Shared Services.
		Director, Employee Plans, Rulings, and Agreements.
		Director, Campus Collection Compliance.
		Director, Examination Area.
		Accounts Management Field Director.
		Submission Processing Field Director.
		Director, Compliance Campus Operations.
		Director, Campus Reporting Compliance.
		Director, Specialty Programs.
		Director, Examination Area (2).
		Director, Collection Area (2).
		Director, Collection.
		Deputy Chief Human Capital Officer, Internal Revenue Service.
		Director, Joint Operations Center.
		Director of Field Operations.
		Director, Advisory, Insolvency and Quality.
		Deputy Commissioner, Small Business/Self-Employed.
		Deputy Director, Procurement.
		Special Agent In Charge.
		Director, Office of Information Technology Acquisition.
		Deputy Director, Enterprise Operations Services.

Agency	Organization	Title
		Assistant Deputy Commissioner for Services and Enforcement.
		Deputy Chief Financial Officer.
		Chief, Communications and Liaison.
		Director of Field Operations.
		Director, Technical Services.
		Chief, Criminal Investigation.
		Chief Financial Officer, Internal Revenue Service.
		Director, Operations Policy and Support.
		Director, Stakeholder, Partnership, Education and Communications.
		Chief Human Capital Officer, Internal Revenue Service.
		Commissioner, Large and Mid-Sized Business Division.
		Commissioner, Small Business and Self Employed.
		Director, Accounts Management, Wage and Investment.
		Deputy Chief, Criminal Investigation.
		Accounts Management Field Director.
		Director, Customer Service and Stakeholders.
		Deputy Associate Chief Financial Officer for Financial Management.
		Director, Business Services and Management.
		Director, Portfolio Control and Performance.
		Director, Real Estate and Facilities Operations.
		Executive Director, Systems Advocacy.
		Director, Examination—Specialty Tax.
		Area Director, Field Assistance (Area 2).
		Director, Network Engineering.
		Director, Business Modernization.
		Director, Examination Area Midwest.
		Director, Implementation Oversight.
		Director, Examination Area.
		Director, Enterprise Collection Strategy.
		Director, Return Preparer Office.
		Deputy Director, Strategy and Finance.
		Director, Operations Service Support.
		Deputy Commissioner, Operations Support.
		Deputy Associate Chief Information Officer for Applications.
		Deputy Associate Chief Information Officer for Enterprise Networks.
		Area Director, Stakeholder Partnership, Education, and Communication.
		Area Director, Stakeholder Partnership, Education, and Communication.
		Director, Refund Crimes.
		Area Director, Field Assistance.
		Director, International Operations.
		Deputy Director, Research, Analysis, and Statistics.
		Director, Field Operations, Retailers, Food, Transportation and Healthcare—East.
		Director, International Business Compliance.
		Director, Collection Area.
		Deputy Associate Chief Information Officer for Enterprise Services.
		Accounts Management Field Director.
		Director, Customer Service.
		Director, Examination Area.
		Area Director, Field Assistance.
		Field Director, Compliance Services.
		Field Director, Compliance Services (Atlanta).
		Director, Collection Area, Gulf States.
		Director, Financial Management Services.
		Deputy Chief of Staff.
		Associate Chief Information Officer for Enterprise Operations.
		Director, Management Services.
		Project Director.
		Director, Business Systems Planning.
		Associate Chief Information Officer, Strategy and Planning.
		Director, Appeals Policy and Valuation.
		Counselor.
		Project Director, Customer Account Data Engine.
		Deputy Director, Submission Processing.
		Director, Collection Policy.

Agency	Organization	Title
		Deputy Division Counsel #2 (Operations)/Small Business and Self Employed.
		Director, Collection Area.
		Deputy Chief Information Officer for Operations.
		Director, Field Operations East.
		Director, Retail, Food, Pharmaceutical, and Health Care.
		Special Agent In Charge—Criminal Investigation.
		Director, Reporting Compliance.
		Director, Data Strategy Implementation.
		Associate Chief Information Officer, End User Equipment and Services.
		Deputy Associate Chief Information Officer, Enterprise Operations.
		Deputy Commissioner (Domestic), Large Business and International.
		Director, Campus Compliance Services.
		Field Director, Accounts Management.
		Director, Office of Privacy, Information Protection and Data Security.
		Director, Enterprise Networks Operations.
		Director, Executive Services.
		Director, Foreign Account Tax Compliance Act—Program Management Office.
		Senior Director for Operations, Affordable Care Act.
		Associate Chief Information Officer, Enterprise Information Technology Program Management.
		Director, E-File Services.
		Chief of Staff.
		Director of Field Operations Southern Area.
		Director, Shared Support.
		Director, Field Operations, Engineering.
		Director of Field Operations, Heavy Manufacturing and Pharmaceuticals, Southeast.
		Director, Collection Strategy and Organization.
		Executive Director, Business Modernization.
		Area Director, Stakeholder, Partnership, Education, and Communication.
		Director, Business Planning and Risk Management.
		Director, Implementation and Testing.
		Director, Campus Operations.
		Director, Business Reengineering.
		Director, Campus Compliance Operations.
		Compliance Services Field Director.
		Director, Service Delivery Management.
		Director, Detroit Program Management Office.
		Director, Privacy and Information Protection.
		Director, International Data Management.
		Director, Strategy, Research and Program Planning.
		Director, Program Strategy and Integration.
		Director, Compliance Strategy and Policy.
		Director, Technical Services.
		Project Director.
		Director, Data Delivery Services.
		Director, Examination Policy.
		Director, Strategic Supplier Management.
		Director, Transfer Pricing Operations.
		Director, Infrastructure and Portal Programs.
		Director, Collection Area—California.
		Director, Exempt Organizations Examination.
		Director, Business Relationship and Service Delivery.
		Director, Examination Area—North Atlantic.
		Executive Director, Investigative and Enforcement Services.
		Executive Director, Investigative and Enforcement Operations.
		Director, Large Systems and Storage Infrastructure Division.
		Director, Filing and Payment Compliance.
		Director, Contact Center Support Division.
		Director, Field Operations, Retail Food, Pharmaceuticals, and Healthcare—West.
		Director, Cybersecurity Policy and Programs.
		Director, Return Integrity and Compliance Services.
		Director, Advanced Pricing and Mutual Agreement.
		Director, Product Management.

Agency	Organization	Title
		Associate Chief Financial Officer, Corporate Planning and Internal Control.
		Director, International Individual Compliance.
		Director, Abusive Transactions and Technical Issues.
		Deputy Director, Office of Professional Responsibility Operations.
		Director, Examination Area.
		Director, Campus Compliance Operations.
		Director, Collection Area.
		Director, Field Operations, Natural Resources and Construction—West.
		Field Director, Submission Processing.
		Assistant Deputy Commissioner (International).
		Director, Filing and Premium Tax Credit.
		Director, Field Operations, International Business Compliance.
		Accounts Management Field Director.
		Deputy Director, Return Preparer Office.
		Deputy Commissioner for Support, Wage and Investment.
		Director, Filing and Payment Compliance.
		Director, Tax Forms and Publications.
		Submission Processing Field Director.
		Deputy Director, Submission Processing.
		Director, Campus Collection Fresno.
		Director, Affordable Care Act.
		Director, Filing Season Integration.
		Special Assistant to the Chief, Appeals.
		Director, Mainframe Support and Services.
		Director, Solution Engineering.
		Deputy Director, Return Integrity and Correspondence Services.
		Director, Technology Solutions.
		Deputy Commissioner, Wage and Investments.
		Director, Online Services.
		Director, Human Capital.
		Director, Enterprise Networks Operations.
		Associate Chief Information Officer, Affordable Care Act, Program Management Office.
		Director, Unified Communications.
		Director, Infrastructure Services.
	Office of the Internal Revenue Service Chief Counsel.	Assistant Chief Counsel (Disclosure and Privacy Law).
		Assistant Chief Counsel (Collection, Bankruptcy and Summonses).
		Deputy Division Counsel/Deputy Assistant Chief Counsel (Criminal Tax).
		Associate Chief Counsel (Income Tax and Accounting).
		Deputy Associate Chief Counsel (Procedure and Administration).
		Associate Chief Counsel (Pass-through and Special Industries).
		Deputy Division Counsel (Large and Mid-Size Business).
		Deputy Associate Chief Counsel (Corporate).
		Deputy Associate Chief Counsel #2 (Pass-through and Special Industries).
		Division Counsel (Large and Mid-Size Business).
		Deputy Associate Chief Counsel #2 (Income Tax and Accounting).
		Area Counsel, Large and Mid-Size Business (Area 3) (Food, Mass Retailers, and Pharmaceuticals).
		Division Counsel (Small Business and Self Employed).
		Division Counsel/Associate Chief Counsel (Criminal Tax).
		Area Counsel (Small Business and Self Employed) (Area 7).
		Area Counsel (Small Business and Self Employed)—Los Angeles.
		Area Counsel (Small Business and Self Employed)—Denver.
		Area Counsel (Small Business and Self Employed).
		Area Counsel (Small Business and Self Employed)—Chicago.
		Area Counsel (Small Business and Self Employed)—Jacksonville.
		Area Counsel (Small Business and Self Employed)—Philadelphia.

Agency	Organization	Title
		Area Counsel (Small Business and Self Employed)—New York.
		Deputy Division Counsel (Small Business and Self Employed).
		Area Counsel (Large Business and International).
		Area Counsel (Large and Mid-Size Business) (Area 4) (Natural Resources).
		Area Counsel (Large and Mid-Size Business) (Area 2) (Heavy Manufacturing, Construction and Transportation).
		Deputy Associate Chief Counsel (Finance and Management).
		Area Counsel (Large Business and International) (Area 1).
		Deputy Division Counsel/Deputy Associate Chief Counsel (Tax Exempt and Government Entities).
		Deputy Associate Chief Counsel (General Legal Services) (Labor and Personnel Law).
		Deputy Associate Chief Counsel (Strategic International Programs).
		Division Counsel (Wage and Investment).
		Deputy Associate Chief Counsel (Financial Institutions and Products).
		Deputy to the Special Counsel to the Chief Counsel.
		Special Counsel to the Chief Counsel.
		Area Counsel, Small Business and Self Employed, Area 9.
		Deputy Division Counsel (Technical), Large Business and International.
		Deputy Associate Chief Counsel (International Field Service and Litigation).
		Special Counsel to the Chief Counsel.
		Deputy Division Counsel and Deputy Associate Chief Counsel (Tax Exempt and Government Entities).
		Deputy Division Counsel/Deputy Associate Chief Counsel.
		Assistant Chief Counsel (International) (Litigation).
		Associate Chief Counsel (Financial Institutions and Products).
		Associate Chief Counsel (Finance and Management).
		Associate Chief Counsel (International).
		Deputy Chief Counsel (Operations).
		Deputy Chief Counsel (Technical).
		Associate Chief Counsel/Operating Division Counsel (Tax Exempt and Government Entities).
		Deputy Associate Chief Counsel (International Technical).
		Special Counsel to the National Taxpayer Advocate.
		Associate Chief Counsel (General Legal Services).
		Deputy Associate Chief Counsel (General Legal Services).
		Associate Chief Counsel (Corporate).
		Associate Chief Counsel (Procedure and Administration).
	United States Mint	Deputy Director for Management.
		Associate Director for Numismatics.
		Associate Director, Environment, Safety and Health.
		Director, Office of Coin Studies.
		Chief Administrative Officer.
		Associate Director for Information Technology (Chief Information Officer).
		Plant Manager, Philadelphia.
		Plant Manager.
		Associate Director for Manufacturing.
		Associate Director for Financial Management/Chief Financial Officer.
		Associate Director for Workforce Solutions.
DEPARTMENT OF THE TREASURY, OFFICE OF THE INSPECTOR GENERAL.	Immediate Office of the Inspector General.	Special Deputy Inspector General for Small Business Lending Fund.
		Deputy Inspector General.
	Office of Counsel	Counsel to the Inspector General.
	Office of Management	Assistant Inspector General for Management.
	Office of Audit	Deputy Assistant Inspector General for Audit (Financial Sector Audits).
		Deputy Assistant Inspector General for Audit (Program Audits).
		Assistant Inspector General for Audit.
		Deputy Assistant Inspector General for Audit (Financial Management).
	Office of Investigations	Assistant Inspector General for Investigations.
		Deputy Assistant Inspector General for Investigations.

Agency	Organization	Title
		Deputy Assistant Inspector General for Investigations.
DEPARTMENT OF THE TREASURY SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM.	Department of the Treasury Special Inspector General for the Troubled Asset Relief Program.	Chief Investigative Counsel.
		Assistant Deputy Special Inspector General for Audit and Evaluation.
		Deputy Special Inspector General Operations.
		Deputy Special Inspector General Audit.
		General Counsel for Special Inspector General for the Troubled Asset Relief Program.
		Deputy Special Inspector General, Investigations.
		Assistant Deputy Special Inspector General for Investigations.
DEPARTMENT OF THE TREASURY TAX ADMINISTRATION, OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Deputy Counsel to the Inspector General.
		Deputy Inspector General for Audit.
		Deputy Assistant Inspector General for Investigations—Field.
		Chief Information Officer.
		Assistant Inspector General for Audit, Compliance and Enforcement Operations.
		Deputy Assistant Inspector General for Investigations—Headquarters.
		Deputy Inspector General for Inspections and Evaluations.
		Principal Deputy Inspector General.
		Deputy Inspector General for Mission Support.
		Chief Counsel.
		Assistant Inspector General for Investigations—Headquarters.
		Deputy Inspector General for Investigations.
		Assistant Inspector General for Audit, Returns Processing and Accounting Services.
		Assistant Inspector General for Audit, Management Planning and Workforce Development.
		Assistant Inspector General for Audit, Security and Information Technology Services.
		Assistant Inspector General for Audit, Management Services and Exempt Organizations.
		Assistant Inspector General for Investigations—Field.
UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT.	Office of the General Counsel	Deputy General Counsel.
		General Counsel, Chief Innovation Counsel.
		Assistant General Counsel, Ethics and Administration.
	Office of Security	Director, Office of Security.
	Office of Small and Disadvantaged Business Utilization.	Director, Office of Small and Disadvantaged Business Utilization.
	Office of Civil Rights and Diversity	Equal Opportunity Officer.
	Bureau for Democracy, Conflict, and Humanitarian Assistance.	Deputy Assistant Administrator.
		Deputy Director, Office of Foreign Disaster Assistance.
	Office of Afghanistan and Pakistan Affairs.	Assistant Administrator.
	Office of Budget and Resource Management.	Director, Budget and Resource Management.
	Bureau for Global Health	Deputy Assistant Administrator.
	Bureau for Africa	Deputy Assistant Administrator, Bureau for Africa.
	Bureau for Management	Deputy Chief Financial Officer.
		Deputy Controller.
		Director, Office of Management, Policy, Budget and Performance.
		Deputy Assistant Administrator.
		Deputy Director, Office of Acquisition and Assistance Operations.
		Deputy Director, Office of Management, Policy, Budget, and Performance.
		Deputy Director for Office of Acquisition and Assistance Policy, Support, and Evaluation.
		Deputy Director, Accountability, Compliance, Transparency and System Support.
		Director, Office of Administrative Service.
		Chief Information Officer.
	Human Capital Talent Management	Deputy Chief Human Capital Officer.
		Chief Human Capital Officer.
	Bureau for Economic Growth, Agriculture and Trade.	Director.
	Bureau for Foreign Assistance	Senior Coordinator.

Agency	Organization	Title
UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, OFFICE OF THE INSPECTOR GENERAL.	Office of the Inspector General	Assistant Inspector General for Overseas Contingency Operations.
		Deputy Assistant Inspector General for Investigations.
		Assistant Inspector General for Investigations.
		Deputy Inspector General.
		Assistant Inspector General for Management.
		Counselor to the Inspector General.
		Deputy Assistant Inspector General for Audit.
		Deputy Assistant Inspector General for Audit.
UNITED STATES INTERNATIONAL TRADE COMMISSION.	United States International Trade Commission.	Director of Operations.
	Office of External Relations	Director, Office of External Relations.
	Office of Industries	Director Office of Industries.
	Office of Investigations	Director, Office of Investigations.
	Office of the Inspector General	Inspector General.
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Secretary and Deputy	Director, Office of Employment Discrimination Complaint Adjudication.
		Executive Director.
	Office of Acquisitions, Logistics and Construction.	Director, Facilities Acquisition Support.
		Executive Director.
		Associate Chief Facilities Management Officer for Resource Management.
		Associate Executive Director, Office of Operations.
		Executive Director, Construction and Facilities Management.
		Associate Executive Director, Strategic Acquisition Center.
		Director, Facilities, Programs, and Plans.
		Executive Director.
		Associate Chief Facilities Management Officer for Strategic Management.
	Office of Acquisition and Materiel Management.	Executive Director, Center for Acquisition Innovation.
		Deputy Assistant Secretary for Acquisition and Materiel Management.
		Associate Deputy Assistant Secretary for Acquisition Program Support.
		Executive Director, National Acquisition Center.
	Board of Veterans' Appeals	Vice Chairman.
		Deputy Vice Chairman (2).
		Principal Deputy Vice Chairman.
		Director, Management, Planning and Analysis.
	Office of the General Counsel	Regional Counsel (6).
		Chief Counsel, Personnel Law Group.
		Counselor to the General Counsel/Director Office of Accountability Review.
		Deputy General Counsel Legal Operations and Accountability.
		Deputy General Counsel, Legal Policy.
		Senior Advisor (Strategic Planning).
		Deputy General Counsel, Legal Operations.
		Executive Director, Management Planning and Analysis.
		Regional Counsel (14).
	Office of the Assistant Secretary for Management.	Principal Deputy Assistant Secretary for Management.
	Office of Finance	Deputy Assistant Secretary for Finance.
		Director, Financial Services Center.
		Associate Deputy Assistant Secretary for Financial Business Operations.
		Associate Deputy Assistant Secretary for Finance.
		Director, Debt Management Center.
	Office of Acquisition and Materiel Management.	Executive Director, Office of Acquisition Operations.
	Office of Asset Enterprise Management	Deputy Director, Asset Enterprise Management.
	Office of Business Oversight	Director, Office of Business Oversight.
	Office of Human Resources Management.	Associate Deputy Assistant Secretary for Human Resources Management Policy.
	Office of Corporate Senior Executive Management.	Executive Director.
	Office of the Assistant Secretary for Information and Technology.	Executive Director for Quality and Performance.
		Deputy Assistant Secretary for Information Technology Resource Management.
		Associate Deputy Assistant Secretary for Policy, Privacy and Incident Management.
		Deputy Assistant Secretary for Information Security.
		Executive Director, Budget and Finance.

Agency	Organization	Title
		Executive Director (Enterprise Operations).
		Associate Deputy Assistant Secretary for Security Operations.
	National Cemetery Administration	Deputy Under Secretary for Finance and Planning/Chief Financial Officer.
	Veterans Benefits Administration	Deputy Director for Operations.
		Deputy Director for Policy and Procedures.
		Deputy Chief Financial Officer.
		Chief Financial Officer.
	Veterans Health Administration	Chief Compliance and Business Integrity Officer.
		Chief Operating Officer, Veterans Canteen Service.
		Associate Chief Financial Officer.
		Chief Procurement and Logistics Officer.
		Associate Chief Financial Officer for Managerial Cost Accounting.
		Associate Chief Financial Officer, Financial Management and Accounting Systems.
		Director, Service Area Office (West).
		Director, Service Area Office (Central).
		Director, Service Area Office (East).
		Deputy Chief Procurement Officer.
		Deputy Chief Financial Officer.
		Executive Director Veterans Canteen Service.
		Chief Financial Officer.
	Medical Center Directors	Medical Center Director (Advisory).
	Office of Emergency Management	Deputy Assistant Secretary for Emergency Management.
	Office of Operations, Security and Preparedness.	Director for Security and Law Enforcement.
DEPARTMENT OF VETERANS AFFAIRS, OFFICE OF THE INSPECTOR GENERAL.	Immediate Office of the Inspector General.	Counselor to the Inspector General.
		Deputy Counselor to the Inspector General.
		Deputy Inspector General.
	Office of the Assistant Inspector General for Investigations.	Deputy Inspector General for Investigations (Field Operations).
		Assistant Inspector General for Investigations.
		Deputy Assistant Inspector General for Investigations (Headquarters Operations).
	Office of the Assistant Inspector General for Audits and Evaluations.	Assistant Inspector General for Audits and Evaluations.
		Deputy Assistant Inspector General for Audits and Evaluations (Field Operations).
		Deputy Assistant Inspector General for Audits and Evaluations (Headquarters Management and Inspections).
	Office of the Assistant Inspector General for Management and Administration.	Assistant Inspector General for Management and Administration.
		Deputy Assistant Inspector General for Management and Administration.
	Office of the Assistant Inspector General for Healthcare Inspections.	Medical Officer (Deputy Director of Medical Consultation and Review).
		Deputy Assistant Inspector General for Healthcare Inspections (Clinical Consultation).
		Deputy Assistant Inspector General for Healthcare Inspections.
		Assistant Inspector General for Healthcare Inspections

Authority: 5 U.S.C. 3132.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

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Part IV

Federal Communications Commission

47 CFR Part 54
Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 11–42, 09–197, 10–90; FCC 16–38]

Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (the Commission) fully modernizes the Lifeline program so it supports broadband services and obtains high value from the expenditure of Universal Service funds. This Order will increase consumer choice and encourage competition among Lifeline providers to deliver supported broadband services.

DATES: Effective June 23, 2016 except for §§ 54.101, 54.202(a)(6), (d), and (e), 54.205(c), 54.401(a)(2), (b), (c), and (f), 54.403(a), 54.405(e)(1) and (e)(3) through (5), 54.407(a), (c)(2), and (d), 54.408, 54.409(a)(2), 54.410(b) through (h), 54.411, 54.416(a)(3), 54.420(b), and 54.422(b)(3) which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a separate document announcing such approval and the relevant effective date(s).

FOR FURTHER INFORMATION CONTACT: Nathan Eagan, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order, Further Report and Order, and Order on Reconsideration (*2016 Lifeline Order*) in WC Docket Nos. 11–42, 09–197, 10–90; FCC 16–38, adopted on March 31, 2016 and released on April 27, 2016. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554 or at the following Internet address: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-38A1.docx.*

I. Introduction

1. The time has come to modernize Lifeline for the 21st Century to help low-income Americans afford access to today's vital communications network—the Internet, the most powerful and pervasive platform in our Nation's history. Accessing the Internet has become a prerequisite to full and meaningful participation in society. For those Americans with access, the Internet has the power to transform almost every aspect of their lives, including their ability to stay in contact with work, friends, and family; to stay abreast of news, to monitor important civic initiatives, to look for a new home, or to make essential financial decisions. Households with schoolchildren access the Internet to research issues, check assignments, and complete homework, while people with critical or even routine health needs use the Internet to access information about their condition and stay in touch with health care providers.

2. But not all Americans are able to enjoy the benefits of broadband in today's society, even as the importance of broadband grows. There are still 64.5 million people without a connection to the Internet and that figure hits hardest on those with the lowest incomes. The biggest reason these Americans don't sign up for broadband today is cost. Only half of all households in the lowest income tier subscribe to a broadband service and 43 percent say the biggest reason for not subscribing is the cost of the service. Of the low-income consumers who have subscribed to mobile broadband, over 40 percent have to cancel or suspend their service due to financial constraints. Affordability remains the primary barrier to broadband adoption.

3. In this Order, we adopt reforms to make the Commission's Lifeline program a key driver of the solution to our Nation's broadband affordability challenge. Intended initially as a mechanism to reduce the cost of phone service for low-income customers, the Lifeline program has worked in lockstep with telephone providers and consumers to increase the uptake in phone service throughout the country and has kept pace with changes in technology as the Nation moved from a wireline world to one where the number of mobile devices and services now exceeds the population of the United States. But at a time when our economy and lives are increasingly moving online and millions of Americans remain offline, the Lifeline program must keep pace with this technological evolution to fulfill its core mission.

4. Our actions here are also compelled by the Congressional directives that guide our approach to all of universal service. Congress expressed its intent in the Communications Act of 1934 to make available communications service to "all the people of the United States" and, more recently, in the Telecommunications Act of 1996, Congress asserted the principle that rates should be "affordable," and that access should be provided to low-income consumers in all regions of the nation. Congress also recognized at the same time that new technologies, in addition to landline telephone service, could provide telecommunication services to consumers and that "[u]niversal service is an evolving level of telecommunications services." Given the evolution of communications technologies and the great strides the Commission has made in improving the performance of the Lifeline program, we must modernize the Lifeline program so it can play an essential and important role in helping those low-income Americans that most need access to valuable broadband services.

5. The Order we adopt today focuses the Lifeline program on broadband by encouraging broadband providers to offer supported broadband services that meet standards we set to ensure ratepayers supporting the program are obtaining value for their contributions and Lifeline subscribers can participate fully in today's society. We also take important steps to improve the management and design of the program by streamlining program rules and eliminating outdated program obligations with the goal of providing incentives for broadband providers to participate and increasing competition and meaningful broadband offerings to Lifeline subscribers. Finally, we follow through on the important and highly effective reforms the Commission initiated in 2012 by making several additional changes to combat waste, fraud, and abuse, including establishing a National Lifeline Eligibility Verifier (National Verifier) that will remove the responsibility of determining Lifeline subscriber eligibility from providers.

II. Executive Summary

6. To create a competitive Lifeline broadband program, this Order takes a variety of actions that work together to encourage more Lifeline providers to deliver supported broadband services as we transition from primarily supporting voice services to targeting support at modern broadband services. We first allow support for robust, standalone fixed and mobile broadband services to ensure meaningful levels of connectivity and we continue to support bundled voice and broadband services. We also establish minimum service standards for broadband and mobile voice services to ensure those services meet the needs of the consumers, and we recognize and allow an exception in areas where fixed

broadband providers do not meet the minimum standards. Finally, in recognition of the important operational needs of Lifeline providers we implement a five and one-half year transition, during which we will gradually increase mobile voice and data requirements and gradually decrease voice support levels. After completion of this multi-year transition, Lifeline funding will be focused on supporting modern services.

7. We next take a step that will curb abuse in the program and encourage provider participation by creating the National Verifier, which will transfer the responsibility of eligibility determination away from Lifeline providers. By lowering Lifeline providers' costs of conducting verification and reducing the risks of facing a verification-related enforcement action, the National Verifier will make the Lifeline program more attractive to providers. The National Verifier will also remove many opportunities for Lifeline providers to inappropriately enroll subscribers. This step—taking determination of eligibility out of the hands of the same parties that stand to benefit financially from a finding of eligibility—is critical to preventing waste, fraud, and abuse. At the same time, we streamline the criteria for Lifeline program qualification in recognition of the way the vast majority of Lifeline subscribers gain entry to the program as well as through a new program for veterans. We will allow entry based on participation in SNAP, Medicaid, SSI, Federal Public Housing Assistance, and the Veterans Pension benefit program, as well as all current Tribal qualifying programs. We will continue to allow low-income consumers to qualify by demonstrating income of less than 135 percent of the federal poverty guidelines.

8. The Order also encourages entry of new Lifeline providers to supply broadband by creating a streamlined federal Lifeline Broadband Provider (LBP) designation process. (Since Lifeline Broadband Providers will be a subset of eligible telecommunications carriers (ETCs) but ETCs that are not LBPs may also be eligible to receive reimbursement for offering Lifeline-supported broadband Internet access service, some of our rules will apply specifically to LBPs while others will apply more broadly to all ETCs participating in the Lifeline program. In this Order we refer to LBPs specifically when the rule being discussed applies only to LBPs.) Working within the statutory construct in Sections 214 and 254 limiting support to eligible telecommunications carriers (ETCs), we establish a process by which broadband providers may receive a designation from FCC staff to provide broadband Lifeline to qualifying low-income consumers. This new LBP designation process provides an additional alternative to the current ETC designation processes, which remain in place. At the same time, we modernize the obligations of broadband Lifeline providers by interpreting and forbearing from parts of the statute that are not needed in the modern broadband marketplace to ensure just and reasonable rates and the protection of consumers. In particular, we allow for broadband-only provision of service, flexibility in service areas, and streamlining of the relinquishment process. We also interpret Section 214(e)(1)(B) to minimize advertising burdens on providers. We establish a pathway for certain existing Lifeline providers currently obligated to provide voice services to obtain relief from such obligations as clear, measurable benchmarks are met. The benchmarks are designed in such a way that providers have strong incentives to encourage uptake of broadband services.

9. We also recognize that increasing digital inclusion means more than addressing the affordability of broadband service. To that end, we require that Lifeline providers make available Wi-Fi enabled devices when providing such devices for use with the Lifeline-supported service. We also require Lifeline providers of mobile broadband service to make available hotspot-enabled devices. We believe these measures will help to extend the connectivity of the service Lifeline supports. We also direct the Consumer and Governmental Affairs Bureau (CGB) to develop and execute a digital inclusion plan that will bring together a variety of stakeholders to determine how Lifeline can best be leveraged.

10. This Order next recognizes the importance of fiscal responsibility in the program, establishes an annual budget of $2.25 billion, and directs the Bureau to submit a report to the Commission if Lifeline disbursements in a year exceed 90 percent of this level, with an expectation that the Commission will act within six months of this report. It is essential that we ensure the program is designed to operate in an efficient, highly accountable manner that obtains great value from the expenditure of ratepayer dollars. In establishing a budget mechanism, we bring the Lifeline program into alignment with the other three programs of the Universal Service Fund, each of which operates within a budget.

11. We also make a number of changes to further improve the efficient administration and accountability of the Lifeline program. We implement measures to evaluate the Lifeline program to determine whether it is achieving its objectives, we reform the non-usage rules, we make recertification a rolling process, we establish a 12-month benefit port freeze for broadband offerings, we take steps to increase transparency in the program, and we modify program forms to reduce administrative burdens on providers.

III. Third Report and Order

A. Modernizing Lifeline To Support Broadband

1. Broadband as a Supported Service

12. There is widespread consensus among commenters that the time has come for the Commission to modernize the Lifeline program to support broadband consistent with the national policy of promoting universal service. Based on the record before us, we take the important step toward achieving one of the express goals of the program by amending the definition of Lifeline to include broadband Internet access service (BIAS) as a supported service in the Lifeline program. Through our actions today, we hereby amend § 54.101 to include BIAS as a supported service. More specifically, our definition of BIAS mirrors that under section 8.2(a) of the Commission rules, which defines BIAS as a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. Finally, consistent with our change to Section 54.101, we also amend Section 54.401 in our Lifeline rules to include BIAS as eligible for Lifeline support. (These amendments to the Commission rules will take effect on the same date as the minimum service standards set forth in Section 54.408 of the Commission rules. *See infra* Section III.B.2. (Minimum Service Standards). By adopting these amendments as well as our forbearance in Section III.E.2 (Lifeline Obligations for Eligible Telecommunications Carriers), we allow service providers to provide BIAS as a standalone offering to qualifying low-income consumers. The obligations for receiving Lifeline support for both BIAS and voice telephony service are further defined below.

13. Our actions today are consistent with the universal service goals

promulgated by Congress. Congress articulated national goals in Section 254 of the Act that services should be available at "affordable" rates and that "consumers in all regions of the nation, including low-income consumers . . . should have access to telecommunications and information services." Congress also made clear in Section 254(c) that "[u]niversal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services." As recently as 2009, Congress, in directing the Commission to develop a National Broadband Plan, specifically dictated that such a plan must provide a detailed strategy for achieving affordability of broadband services.

14. Within the record before us, there is ample evidence to find that BIAS meets the standard set forth in Section 254(c) given the many ways that individuals rely on broadband in their daily lives, the significant percentage of the population with means subscribing to such services, and the deployment and investment spent on infrastructure. Taking these factors into account, we conclude it is imperative for us to include BIAS as a supported service.

15. More than 200 commenters responded to the Commission's *2015 Lifeline FNPRM* with nearly all of them urging the Commission to include broadband in the Lifeline program. There is widespread consensus from a range of commenters including service providers, state public utilities commissions, academics, software companies, and consumer advocates.

16. Moreover, objections to modernizing the Lifeline program to include support for broadband principally concern collateral effects that can be addressed without sacrificing program modernization. We do so elsewhere in this Order. For example, both AT&T and Verizon have expressed concern over amendments to Section 54.101 to include BIAS as a supported service on the theory that all ETCs receiving high-cost support would be obligated to offer BIAS throughout their designated service areas, even in those areas where they do not receive high-cost support or have not deployed broadband networks with the minimum speed standards. We recognize that, subsequent to the 1996 Act, state public utilities commissions designated ILECs as ETCs wherever they offered voice telephony service in a state and defined their designated service areas for purposes of receiving federal universal service support as such, including Census blocks where the provider does not currently receive high-cost support or is not obligated to build-out broadband at 10 megabits per second (Mbps) download/1 Mbps upload (10/1 Mbps) speeds pursuant to Commission rules. As a result, ILECs have had the Lifeline obligation to provide discounted voice service throughout their designated service area. (Existing ETCs currently continue to have a Lifeline voice obligation throughout their designated service areas, regardless of their receipt of high-cost support. In this Order, however, we provide conditional forbearance from this obligation). We are sympathetic to ILECs' concerns about requiring them to offer broadband in Census blocks within their ETC designated service areas where the provider is not obligated to build-out broadband services pursuant to our high-cost rules, where broadband services are not commercially available, and in those Census blocks where the provider does not receive high-cost support. To address these concerns, we forbear from Section 214(e)(1) such that ETCs are not required to offer Lifeline-supported broadband service in Census blocks throughout their designated service areas, but instead only where the provider receives high-cost support and is commercially providing broadband consistent with the provider's obligations set forth in the Commission's high-cost rules and requirements.

17. In addition, for recipients of high-cost support, in those areas where the provider receives high-cost support but has not yet deployed a broadband network consistent with the provider's high-cost public interest obligation to offer broadband, the obligation to provide Lifeline broadband services does not begin until such time as the provider has deployed a broadband network and is commercially offering service to that area. We also recognize some carriers' arguments that the Commission should not impose a Lifeline broadband obligation on ETCs in areas where those carriers receive frozen high-cost support, because the frozen support program is an interim program that will be eliminated after the Commission conducts the Connect America Fund Phase II competitive bidding process and frozen support recipients are not required to meet the Lifeline program's minimum speed standards for BIAS offerings. We agree that carriers' receipt of frozen high-cost support should not carry with it a Lifeline broadband obligation, and we therefore clarify that those ETCs receiving frozen high-cost support—whether incumbent providers or competitive ETCs—are not required to offer Lifeline-supported broadband services in their designated service areas where they receive frozen support. (*See* 47 CFR 54.312(a); 54.313(c)(4) (requirements for incumbent LECs receiving Phase I frozen support); 47 CFR 54.307 (frozen support for competitive ETCs). However, those carriers serving non-contiguous areas that elected to continue receiving their existing high-cost support amounts in lieu of model-based support for Connect America Phase II will be subject to Lifeline broadband obligations once the Commission adopts their carrier-specific Phase II obligations.) Finally, we also clarify in that ETCs receiving high-cost support are not required to offer broadband services in Census blocks where the ETC does not receive high-cost support. We adopt these requirements to ensure that all consumers living in high-cost areas, including low-income consumers, have the option of subscribing to broadband once it is commercially available.

18. Some parties, such as ITTA, suggest that the Lifeline program should be overhauled before providing support for broadband. (Given the significant changes we adopt within the Lifeline program, we adopt a budget to continue to reduce the contribution burden on consumers). This argument, however, overlooks the significant measures already put in place over the last five years to root out waste, fraud, and abuse and, just as importantly, underestimates the critical importance broadband plays for individuals on a daily basis. Since 2012, when the Universal Service Administrative Company (USAC), the Administrator of the Fund, disbursed more than $2.1 billion in Lifeline support payments, reforms to improve program integrity have reduced disbursements by nearly a third, with Lifeline support payments dropping below $1.5 billion in 2015.

19. In modernizing the Lifeline program to include broadband, we also clarify that the current rule that prohibits the collection of service deposits "for plans that . . . [d]o not charge subscribers additional fees for toll calls," applies only to standalone voice services. Lifeline service providers are not precluded from collecting service deposits for eligible broadband services. That rule plainly was written with standalone voice service in mind, and it does not have an analog in the context of broadband offerings. For these reasons, Section 54.401(c) is amended to clarify that the prohibition on collecting service deposits is limited to voice-only service plans.

2. Legal Authority

20. The principles listed in Section 254 of the Act make clear that deployment of, and access to, telecommunications and information services are important components of a robust and successful federal universal service program, including the directive to address low-income needs. In Section 254, Congress expressly recognized the importance of ensuring that low-income consumers "have access to telecommunications and information services, including . . . advanced telecommunications and information services" and that universal service is an "evolving level of telecommunications service." Section 254 of the Act also sets forth the principles that "[q]uality services should be available at just, reasonable, and affordable rates" and that "access to advanced telecommunications and information services should be provided in all regions of the Nation."

21. Consistent with those statutory objectives, we conclude that Section 254 authorizes us to support bundled voice and BIAS as well as standalone BIAS by defining BIAS as a supported service for purposes of a Lifeline broadband program. For purposes of a given universal service program, Section 254(c)(1) authorizes the Commission to define universal service as an evolving level of telecommunications services that the Commission establishes periodically based on an analysis of several factors. The BIAS that we define as a supported service for the Lifeline broadband program is a telecommunications service that warrants inclusion in the definition of universal service in this context. (In the *Open Internet Order,* the Commission concluded that BIAS is a telecommunications service subject to our regulatory authority under Title II of the Act regardless of the technological platform over which the service is offered. Even before that, however, during the time the Commission had classified BIAS as generally an information service, it recognized the possibility of broadband Internet access transmission being offered on a common carrier basis as a telecommunications service. Thus, even beyond the classification of BIAS generally, we make clear that BIAS as the supported service for the Lifeline broadband program is a telecommunications service.).

22. Based on the record before us, we find there is ample evidence for us to conclude that circumstances have "evolved" where BIAS can and should be included as an element of universal service pursuant to Section 254(c) and made available to Lifeline participants. The criteria set forth in Section 254(c) fully justify our finding. BIAS has, indeed, become "essential to education, public health and public safety. . . . " (Low-income consumers should have access to the same public safety features as all Americans. Lifeline providers offering a supported service must meet any obligations generally applicable to that service, including, for example, with respect to Next Generation 911 Services. *See generally* 47 CFR 20.18. We also make clear that Lifeline providers offering texting services must provide text-to-911 capability to subscribers in accordance with Commission rules. *See* 47 CFR 20.18(q). Lifeline providers should not assess a fee for texts or calls to 911.). As detailed above, the Commission has a legal and factual basis to include BIAS as a supported service. The Commission also previously has concluded that directly applying Section 254 to BIAS will help enable us to promote adoption of broadband services and more flexibility going forward. We thus conclude that defining BIAS as the supported service for purposes of the Lifeline broadband program strongly advances the public interest, convenience, and necessity under Section 254(c)(1)(D).

23. Our approach is also supported by Section 254(c)(1)(A). Under that provision, the Commission considers whether a given supported service is "essential to education, public health, or public safety." We explain above the importance of BIAS to education and healthcare, among other things, along with the need for discounts in order to enable low-income consumers to realize those benefits. We therefore conclude that BIAS is essential for education and public health for low-income Americans.

24. Section 254(c)(1)(B) directs the Commission to consider whether the service at issue has "through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers." As noted above, it is reported that 84 percent of American adults use the Internet and surveys have shown that when households have the means, they connect to the Internet at home at rates upward of 95 percent with approximately two-thirds of Americans subscribing to broadband at home. Based on this data, we find that a substantial majority of residential customers subscribe to broadband services. Likewise, we find that BIAS is widely "being deployed in public telecommunications networks by telecommunications carriers" under Section 254(c)(1)(C) given the billions of dollars in capital investment that broadband service providers have spent on broadband networks over the last few years.

25. We also conclude that our action to include BIAS as a supported service is consistent with and advances the Congressional direction and goals set forth under Section 706 of the 1996 Act. Section 706(a) directs the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." Section 706(b) requires the Commission to determine whether "advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. . . .," and, if the Commission concludes that it is not, to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." The Commission has determined that broadband deployment is not proceeding in a reasonable and timely manner, most recently in the *2016 Broadband Progress Report.* Providing support to service providers to subsidize low-income consumers' purchase of BIAS helps achieve our 706 objective of "removing barriers to infrastructure investment." The Commission has recognized that a key barrier to infrastructure investment is lack of affordable broadband Internet access service. The Commission has previously recognized that providing federal support for low-income consumers' purchase of BIAS will broaden the base of consumers able to purchase such services, thereby increasing consumer demand and incentives to deploy broadband in areas where broadband is not yet available. Given the Commission's objective of ensuring availability and affordability of broadband services, and the importance of broadband to consumers in the 21st Century, providing support to Lifeline providers to subsidize low-income consumers' purchase of broadband services helps achieve our Section 706 objectives.

B. Characteristics of Lifeline Support

26. In Section III.A, Modernizing Lifeline to Support Broadband, we take the important step of amending our rules to include BIAS as a supported service. In this Section, we now act on several proposals in the *2015 Lifeline FNPRM* directed at improving the Lifeline program so that it better supports robust service and strategically targets valuable universal service funds

in a way that is faithful to our mandate to make services affordable to low-income consumers. We are persuaded that giving qualifying consumers the choice of receiving support for either fixed or mobile offerings will better serve consumers as competitive forces help to encourage all Lifeline providers to make attractive offerings within the Lifeline market. In particular, we modify our Lifeline rules to direct support over time to broadband services. We also adopt minimum service standards designed to ensure robust service levels for Lifeline subscribers and which can be updated on a regular basis so that the support provided by the Lifeline program continues to meet our statutory mandate to ensure "reasonable comparability" of services. We also establish permanent monthly support levels.

1. Supported Modes of Service

27. *Discussion.* In this Section, we adopt several reforms to empower low-income consumers with competitive choices for robust, affordable Lifeline services necessary for full participation in today's economy. First, to keep pace with the marketplace and our goals of ensuring the availability of broadband and voice services, we hereby amend our rules to permit Lifeline providers to receive Lifeline support for standalone mobile or fixed broadband service offerings. Second, for both fixed and mobile voice services, to ensure the Lifeline program continues to focus its funding on modern, future-facing services for which affordability is an issue, we phase in a requirement that to be eligible for Lifeline support, a voice service must include broadband service, thereby phasing-out support for voice service as a standalone option. In doing this, we carve out an exception for the phase-out of standalone voice service provided by ETCs in those Census blocks where the ETC is the only Lifeline service provider in that given Census block. To prevent undue disruption and allow the marketplace to adjust, we adopt a multi-year transition and also direct the Bureau, near the end of the transition, to review the Lifeline market and submit a report to the Commission recommending whether action should be taken to revise the approach to supported services that we adopt today (State of the Lifeline Marketplace Report). We expect the full Commission will take appropriate action if necessary to make changes to the program within six months of receiving the report, for example adjusting support levels or minimum service standards, so that the Lifeline program continues to achieve its objectives. Barring further Commission action, once this transition is complete, we will require voice service to be bundled with an eligible broadband service in order for it to be supported. Finally, we retain our approach to permit support for bundled offerings and our limit of one Lifeline subscription per household.

28. *Fixed and Mobile Broadband Offerings.* Given the importance of broadband to consumers in our society and how it is has become essential to education, public health, and public safety, we believe it is necessary to provide Lifeline consumers the option of applying the Lifeline benefit to a standalone broadband offering. Standalone broadband services are increasingly popular as consumers transition from bundled services to broadband-only plans. In many areas, as the communications market evolves, broadband is replacing traditional telephone service and providing subscribers with voice and texting options in addition to Internet access. To close the digital divide and ramp up digital readiness for all consumers in the United States, we amend our rules to give Lifeline providers the option of offering standalone broadband services as a Lifeline supported service. By allowing support for standalone broadband services with Lifeline, we add an additional measure of consumer choice as well as the opportunity for innovative providers to serve low-income consumers in new ways. Supporting standalone broadband offerings will not only allow consumers to subscribe to offerings that work best for their needs, but Lifeline providers will also seek to find solutions that work best for their customers. (We make clear that ETCs receiving high-cost support are required to offer a Lifeline-supported standalone broadband offering where the ETC is required to offer Lifeline-supported BIAS to ensure that all low-income consumers, including those living in high-cost areas, have the option to subscribe to standalone broadband offerings).

29. We allow Lifeline subscribers to apply the discount to fixed or mobile standalone broadband offerings. (In the *USF/ICC Transformation Order,* the Commission made clear that carriers may not charge any Lifeline customers an Access Recovery Charge (ARC). By extension, as we include broadband as a Lifeline-supported service, we make clear that rate-of-return carriers are not required to impute an amount equal to their ARC rate for consumer broadband-only loops provided to Lifeline broadband customers.). We empower consumers to make this choice. While fixed and mobile broadband services both provide access to online services, there are some key tradeoffs consumers must consider regarding the utility of each service. We recognize these tradeoffs both in terms of technological constraints and how each mode is offered in the market. We also recognize different households will have different preferences for certain product characteristics, such as mobility or data usage allowance. Therefore, we find it important to give qualifying consumers the choice of receiving support for either fixed or mobile broadband service. This allows households a choice as to which service to apply the discount towards. Permitting a Lifeline provider to offer standalone broadband offerings will also ensure that Lifeline consumers are not forced to purchase services they may not want within a bundle. We agree with many commenters who argue that it is important to enable low-income consumers to choose the services that best meet their needs, but at the same time put measures in place to ensure such Lifeline offerings are affordable and comparable to what is currently available in the market. For many people, this includes the option of subscribing to a standalone broadband offering.

30. We are persuaded that giving qualifying consumers the option of receiving support for either fixed or mobile standalone broadband will better serve consumers as competitive forces encourage Lifeline providers to make valuable broadband offerings supported by the Lifeline program. More attractive offers which result in higher consumer benefits will mean that the funds provided by contributors will be used to provide greater value. For example, we envision a Lifeline provider seeking to address various "digitally divided" consumers with attractive offers of service unique to families with children or the elderly.

31. *Voice-only Offerings.* As part of our modernization efforts, and with a keen view toward directing Lifeline funds toward services in a way that reflects the technological and marketplace evolution toward data services, we find that Lifeline services must include a broadband offering after the transition period set forth below. To be sustainable and achieve our goals of providing low-income consumers with robust, affordable, and modern service offerings, a forward-looking Lifeline program must focus on broadband services. Therefore, based on the record before us, we conclude that it is necessary that going forward the Lifeline discount will no longer apply to

a voice-only offering following an extended transition period, except as provided below in Census blocks with only one Lifeline provider. We are persuaded that it is necessary to use a multi-year transition ending in 2021. After this transition, we will continue to support voice service when bundled with a broadband service which meets the minimum service standards set forth below.

32. As a general matter, we adopt a technologically neutral approach and the schedule with respect to support for standalone voice service will apply equally to mobile and fixed providers of voice services. We recognize, however, that in some limited circumstances an ETC that is providing voice service may be the only Lifeline provider in a given area when Lifeline support for standalone voice service otherwise would have been phased out. With respect to any area where a provider is the only Lifeline provider, consistent with the transition described in detail below, the provider will retain its ETC obligations as a Lifeline provider and may receive Lifeline support up to $5.25 per month for standalone voice service provided to eligible subscribers. (*See infra* Section III.B.3 (Support Levels). This assumes that the ETC has not qualified for the conditional forbearance described in Section III.E.2 (Forbearance Regarding the Lifeline Voice Service Obligations) or relinquished its ETC status in relevant part.

33. The animating principle of the Lifeline program has always been affordability. For years, Lifeline support focused on making affordable fixed residential voice services, providing a discount that combined with a customer contribution to help low-income Americans connect to the telephone network. In 2005, we expanded the program to allow participation by non-facilities-based providers, including prepaid wireless resellers. Since then, the marketplace for both Lifeline and non-Lifeline voice offerings has evolved dramatically. Indeed, non-Lifeline voice rates have fallen drastically since the *2012 Lifeline Reform Order.* (By the end of 2011, an offering of 450 voice minutes and unlimited text, would cost $49.99. Today, one can subscribe to an unlimited voice and text plan for $25 per month). Some observers have pointed out that even though millions of households are eligible for—but do not participate in—the Lifeline program, the vast majority of these non-participating households still manage to obtain access to voice communications. (USAC reports that there are at least 39.7 million eligible Lifeline households in the states and District of Columbia with a participation rate of 32 percent). In contrast, broadband adoption among low-income households remains well below that of other groups, and affordability is widely cited as one of the primary reasons.

34. Our review of the record reveals that voice service is declining in price within the marketplace. This is particularly true of mobile voice services. Some voice-only plans run as low as $10 per month. As we recognized in the *2015 Lifeline FNPRM,* the cost of provisioning wireless voice service has decreased significantly since the *2012 Lifeline Reform Order,* and there are no indications such cost decreases will cease. Even outside the Lifeline program, cost decreases have led to a large variety of reasonably priced voice options provided by providers. One indication that voice service is declining in price is that, as of January 2014, mobile voice adoption rates exceeded 90 percent overall and 84 percent for low-income adults. In the *Eighteenth Mobile Competition Report,* the Wireless Telecommunications Bureau reported that the nationwide penetration for mobile connections now exceeds 100 percent, meaning that the number of connected devices exceeds the total population of the United States. As of September 2015, CTIA has reported over 355.4 million mobile phone subscribers. The *Eighteenth Mobile Competition Report* also noted that, according to CTIA, reported annual minutes of use in 2014 reached over 2.45 trillion. In contrast, the record reveals that data is not as ubiquitous as voice and certainly not as affordable. Pew Research Center recently reported that home broadband adoption appears to have plateaued with 67 percent subscribing to such service, down slightly from 70 percent in 2013. Smartphone adoption is also only 64 percent overall and 13 percent of low-income Americans rely solely on a smartphone for their Internet access. (In the *Eighteenth Mobile Competition Report,* the Wireless Telecommunications Bureau noted that, according to ComScore, approximately 77 percent of all mobile subscribers had a smartphone in the third quarter of 2015, compared to approximately 51 percent in the third quarter of 2012). Furthermore, as demonstrated by the Pew Research Center, many Americans experience difficulties in affording and retaining service on smartphones. In fact, those who rely the most on only their smartphone for Internet access have the most difficulty retaining service given that such consumers frequently reached their data caps as part of their monthly plan.

35. Technological evolution and market dynamics have also resulted in more choices and decreasing prices for fixed voice service. The record reflects that customers are increasingly opting for voice services made possible through fixed broadband connections, including VoIP as well as over-the-top voice applications. While some differences between VoIP and traditional fixed voice service remain, we agree with commenters that note that such VoIP services will likely improve and introduce more competition into the marketplace over time. Meanwhile, the Consumer Price Index, maintained by the Bureau of Labor Statistics, has found that telephone services, including both mobile and fixed offerings, have only increased in price during one year from 2010 to 2014, while the price of all goods and services generally increased each year during the same time period. We also recognize the nationwide trend that consumers are increasingly migrating away from fixed residential voice service to mobile voice services, which, as discussed above, have decreased in price. This information further supports our technologically neutral conclusion that, while recent trends in fixed and mobile voice service offerings are not identical, both modes of voice service are undergoing significant change in response to technological developments and new competitive service offerings enabled by those developments.

36. Affordability must remain a central touchstone within the Lifeline program. Mindful of Congress's Section 254 mandate that "[q]uality services should be available at just, reasonable and affordable rates," we believe that the Lifeline program should directly support those services that are otherwise unaffordable to consumers, but for a Lifeline discount. We also find that continuing to support a voice-only product that is reasonably priced will result in a Lifeline program that fails to deliver the "evolving level" of services that "*are being* deployed" (emphasis added). While much of the Lifeline market is competitive, we are concerned that continuing to support a voice-only service would artificially perpetuate a market with decreasing demand and incent Lifeline providers to avoid adjusting their business practices. Instead, these Lifeline providers may have an incentive to maintain the *status quo* and avoid providing low-income customers with modern services as Congress intended. For these reasons, we do not believe it is consistent with Congress' directive to continue providing support to voice-only service

within the Lifeline program outside of the transition period discussed below.

37. Several commenters have argued that the Commission should continue to permit Lifeline providers to offer standalone voice service. These parties contend that the Commission should retain support for standalone voice service given that many low-income and unemployed Americans rely on such means of communication within their daily lives. We agree with such commenters that voice continues to be an important resource for consumers to utilize in communicating with others. But we are not persuaded that such service will no longer be available or affordable if it is part of a bundle with broadband services. We make this judgment based on evidence of the power of market forces in the marketplace to compete and innovate to meet consumer demand. We take it as given that many consumers have demanded and will continue to demand voice communications. We predict that Lifeline providers will be responsive to this consumer demand by bundling voice with data offerings and otherwise ensuring consumers are able to easily use a voice service with their data plan. We believe that the innovative Lifeline providers currently in the program will be just as innovative in packaging competitive voice offerings with the supported broadband service. Indeed, wireless Lifeline providers have already recognized the increased demand for broadband and as a result are starting to include broadband options within their Lifeline offerings.

38. We further recognize that, in the existing Lifeline marketplace, Lifeline providers have met consumers' demands for texting, although it is not a Lifeline-supported service. Many Lifeline providers under their own volition have offered unlimited texting with the Lifeline voice service. Mobile plans offered to non-Lifeline subscribers are priced as low as $20 for unlimited talk and text when bundled with data, whereas some Lifeline plans offer as much as approximately 500 voice minutes and text. In the same way, we would expect Lifeline providers would be incentivized by competitive forces to meet the demand for voice service and make voice services available to customers.

39. We emphasize that nothing in our rule change will prevent a Lifeline provider from offering a bundle of voice and broadband service that delivers the voice component over either non-IP or IP technologies. In this way, we allow for Lifeline providers to choose how, whether, and when to transition to the use of newer technologies for delivering voice service. As part of the overall Lifeline modernization, this change sets the stage for a full program modernization where Lifeline providers are delivering voice services to customers over modern technologies in a much more efficient way that benefits consumers and provides more value to the Fund.

40. In summary, to ensure that future Lifeline offerings are sufficient for consumers to participate in the 21st Century economy at affordable rates, and to obtain the most value possible from the Lifeline benefit, we modify the Lifeline rules to support voice services only through a bundle that includes broadband services pursuant to the transition period detailed below. This phase-out of support will not apply to ETCs providing voice service in census blocks where they are the only Lifeline service provider. We are persuaded that Lifeline must provide a robust, affordable service and be forward-looking so that as newer technologies become more widely available, the program can continue to deliver value to the low-income subscriber and to the ratepayers supporting the program. Encouraging use of such voice-only service indefinitely is inconsistent with the Act's guidance that "[u]niversal service is an evolving level of telecommunications services" that "are being deployed in public telecommunications networks."

41. *Transition.* We recognize, however, that a transition is necessary to avoid undue consumer disruption and to allow Lifeline providers sufficient time to adjust operations as the Commission moves from a primarily voice-only Lifeline program to a Lifeline program embracing broadband services. We believe the best way to conduct this transition is by gradually reducing the monthly support level for voice-only service. At the same time, we will phase-in higher mobile broadband minimum service standards. As detailed in Sections III.B.3 (Support Levels) and III.B.2.b (Minimum Service Standards for Lifeline Services), the support level for voice-only service will decline over a multi-year period while the minimum service standard for mobile voice-only service will be set at an initial level, and will be increased until the minimum standard will be 1,000 minutes per month. Such a path to robust offerings is in line with the fact that a "substantial majority" of non-Lifeline subscribers already purchase plans with 1,000 or more minutes using either fixed or mobile services. Given that fixed voice service often already includes unlimited minutes, we will not impose minimum service standards on fixed voice service offerings.

42. This initial voice-only minimum service standard will become effective the later of December 1, 2016 or 60 days after the date when the Commission receives approval from the Office of Management and Budget (OMB) for the new information collection requirements in this Order subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. At the same time, beginning on the same date, a phase-in of mobile broadband will begin. As described below, this transition is scheduled to continue until December 1, 2021. During the initial phase-in period, from December 1, 2016 through November 30, 2019, a voice and broadband Lifeline bundle must include at least one supported service meeting the minimum service standards applicable at that time. From December 1, 2019 to November 30, 2021, a voice and broadband Lifeline bundle must include a BIAS offering that meets the broadband minimum service standards applicable at that time in order to receive the full $9.25 benefit. From December 1, 2019 to November 30, 2021, a voice and broadband Lifeline bundle with a broadband offering that does not meet the applicable mobile broadband minimum service standards but does meet the mobile voice minimum service standard may receive the applicable support level for standalone mobile voice.

43. Prior to December 1, 2019, voice-only support will be set at $9.25 per month. Beginning December 1, 2019 the support amount will decline to $7.25 per month; beginning December 1, 2020, it will decline further to $5.25 per month. During that time period, we will also phase-in increasing minimum service standards for mobile voice service. Beginning the later of December 1, 2016 or 60 days after PRA approval, supported mobile voice offerings must include at least 500 minutes per month; beginning December 1, 2017, supported mobile voice offerings must include at least 750 minutes per month; and beginning December 1, 2018, supported mobile voice offerings must include 1000 minutes per month. Beginning December 1, 2021, there will no longer be support for voice-only service, or voice service bundled with a broadband offering that does not meet the applicable minimum service standard for BIAS, unless the Commission has acted upon recommendations to do otherwise presented in the State of the Lifeline Marketplace Report. However, voice service will continue to be supported as long as it is offered with

a broadband service meeting the minimum service standards.

44. Over the same period for which the voice-only support level declines for fixed and mobile voice services, fixed and mobile broadband will receive $9.25 in monthly support and the minimum service standard for mobile broadband service will gradually increase. Specifically, on the later of December 1, 2016 or 60 days after the Commission receives PRA approval of the information collection requirements in this Order, the mobile broadband minimum service standards for data usage allowance will be set at 500 megabytes (MB) monthly at 3G speeds. The minimum data usage allowance will increase to 1 gigabyte (GB) on December 1, 2017 and to 2 GB on December 1, 2018. On December 1, 2019, the minimum standard for mobile data usage will be set based on a forward-facing updating mechanism using objective data as described below. From December 1, 2016 to November 30, 2019, a voice and broadband Lifeline bundle must include at least one supported service meeting the minimum service standard applicable at that time for such supported service. (*See infra* Section III.B.2.)

45. *Minimum Service Standards.* After December 1, 2021, in order to receive the full support amount of $9.25 for mobile services, ETCs must provide the minimum service standards for BIAS as a Lifeline supported service to qualifying low-income consumers. *See infra* paras. 97–22). As discussed above, from December 1, 2019 to November 30, 2021 a voice and broadband Lifeline bundle must include a broadband offering that meets the applicable minimum service standard to be eligible for the full $9.25 benefit.

46. However, given the inherent uncertainty in the future Lifeline marketplace, we also direct the Bureau by June 30, 2021, to submit to the Commission a State of the Lifeline Marketplace Report. This report should review the Lifeline marketplace for the purpose of recommending to the Commission whether the transition set out in this Order should be completed or whether the Commission should act to continue delaying Lifeline's transition to chiefly supporting broadband services. This report should in particular consider the prevalence of subscriptions to various service offerings in the Lifeline program, the affordability of both voice and broadband services, the pace since adoption of this Order at which voice and data usage has changed, and the associated net benefits of continuing to support voice service as a standalone option. (The Bureau in the State of the Lifeline Marketplace Report should in particular follow the principles presented in Part E of OMB Circular A–4 for the purpose of determining whether to continue support for voice-only service. *See* OMB Circular A–4 *https://www.whitehouse.gov/omb/circulars_a004_a-4/*). We expect the full Commission will take appropriate action if necessary to make changes to the program within six months of receiving the report, for example, adjusting support levels or minimum service standards, so that the Lifeline program continues to achieve its objectives. If the Commission does not act following the recommendation(s) in the State of the Lifeline Marketplace Report then the transition will be completed on December 1, 2021.

47. *Bundled Service Offerings.* We continue to allow low-income consumers to apply the Lifeline discount to support fixed and mobile bundles that include one or more of the supported services so long as one of the supported services offered satisfies the minimum service standard requirements. In other words, the discount may be applied to a mobile bundle of voice and data services so long as *either* the voice service *or* the data service meets the applicable minimum service standard. Other non-supported services (*e.g.,* texting) may be bundled with supported services and the Lifeline discount may be applied to the bundle. This does not represent a change in policy as many Lifeline providers have voluntarily offered non-supported services to consumers bundled with Lifeline-supported services. We agree with commenters and view such offerings as enhancing consumer benefits. We recognize this as an illustrative case whereby Lifeline providers identify consumer demand for a non-supported service such as texting and voluntarily provide the service consumers demand apart from any regulation from the Commission.

48. *One-Per-Household Rule.* Through our reforms today, we continue to believe it is necessary to apply the one-per-household requirement within the Lifeline program. Just as the Commission concluded in the 2012 *Lifeline Reform Order,* we believe a one-per-person rule or one-per-service rule—providing an individual household an opportunity to receive one supported service for both voice and broadband—could increase the size of the Lifeline program by a significant percentage above the projected Fund size. By limiting support to one Lifeline offering and one household, we find that continued implementation of the one-per-household rule strikes an appropriate balance between ensuring that support is available for eligible low-income households against disbursing universal service funds in a fiscally prudent and sustainable way. By continuing to enforce the one-per-household rule, we also decline to adopt some commenters' suggestions that a household be able to receive more than one discount to support multiple services. Instead we take an alternate path suggested by commenters, providing consumers a choice as to which service (or set of bundled services) their Lifeline discount is used to support.

2. Minimum Service Standards

a. Introduction

49. In the *2015 Lifeline FNPRM,* we proposed establishing minimum service standards for all Lifeline service offerings "to ensure the availability of robust services for low-income consumers," and we proposed updating the minimum service standards. We now adopt detailed rules in line with these proposals, and revise Section 54.408 of the rules. In order for Lifeline customers to obtain the type of robust service which is essential to participate in today's society, we conclude that forward-looking minimum service standards are required, and that those standards must be updated on a regular basis.

50. The minimum service standards we adopt are rooted in the statutory directives to ensure that quality services are available at "just, reasonable, and affordable rates," and that advanced telecommunications services, the services which have "been subscribed to by a substantial majority of residential customers," are available throughout the nation. We interpret these directives as requiring the Commission to ensure that low-income consumers can both afford and physically access services that are available throughout the Nation. The standards adopted below ensure that Lifeline supports the type of service the Act specifically requires, and the updating mechanisms will give Lifeline subscribers confidence that their supported service will remain robust as technology improves through a predictable mechanism.

51. The minimum standards we establish will also account for the need for Lifeline service offerings to be affordable. As we noted, "the Lifeline program is specifically targeted at affordability," and it is necessary to establish minimum service levels that are both affordable and reasonably comparable. Commenters also

emphasized the importance of affordability to facilitate broadband adoption. The minimum standards that we establish strike a balance between the demands of affordability and reasonable comparability by providing consumers with services that allow them to experience many of the Internet's offerings, but not mandating the purchase of prohibitively expensive offerings.

52. We first explain which services will have minimum service standards. We also set initial minimum service standards and provide updating mechanisms. Finally, we describe exceptions made for providers who do not offer services meeting our minimum standards.

b. Minimum Service Standards for Lifeline Services

53. *Discussion*. We now modify our rules to establish minimum service standards for all Lifeline supported services based on services to which a "substantial majority" of consumers have already subscribed. We also set forth the data sources that will be used to set and update minimum service standards. We establish separate standards covering speed and data usage allowances for both fixed and mobile services in recognition of each service's distinct characteristics, and we establish minimum standards for mobile voice service, until standalone mobile voice is no longer a supported service.

54. Numerous commenters support establishing minimum service standards for broadband; they emphasize that Lifeline customers should not need to accept "second-tier" service, and that functional Internet access is essential to allow consumers to fully participate in society. Broadband access can help households meet their "basic needs for education, health care, disabilities access, and public safety." While other commenters argue that minimum service standards are unnecessary, or unduly burdensome, we generally believe that, at a minimum, services that are subscribed to by a substantial majority of the nation's consumers should receive Lifeline funding. We are unpersuaded by the argument that minimum service standards are unduly burdensome. As discussed in greater detail, *infra*, we grant exemptions in certain situations where a fixed broadband provider does not currently offer service meeting the minimum standards.

55. In the *2015 Lifeline FNPRM*, we also sought comment on "whether and how service levels would vary between fixed and mobile broadband service." While some commenters argued that the same standards should apply to fixed and mobile broadband, we believe that different standards are appropriate because of the technological differences between fixed and mobile broadband, the two services' different capacity patterns, and the different constraints on service. For example, mobile broadband providers face spectrum constraints that fixed providers do not, and the speed mobile broadband providers can deliver to consumers is far more dependent on the consumer's location. For similar reasons, the Commission has established different minimum service standards for fixed and mobile broadband when setting carrier obligations in the Connect America Fund (CAF). Based on all of these factors, we conclude that different minimum service standards for fixed and mobile broadband are appropriate.

56. Finally, while setting initial minimum service standards is necessary to guarantee access to services that a "substantial majority" of residential consumers have already subscribed to, it is equally important to regularly update those standards to make sure that Lifeline continues to support an evolving level of telecommunications service. Because technology develops at a rapid pace, any minimum standards we set would quickly become outdated without a timely updating mechanism. Commenters also agree that any minimum service level must be updated regularly. Accordingly, we conclude that minimum standards must be updated on a regular basis to ensure that consumers are able to continue to receive sufficiently robust service similar to what a substantial majority of American consumers subscribe to. We also conclude that the updating mechanism will rely on an "objective, data-based methodology," as we proposed in the *2015 Lifeline FNPRM*. Finally, we update Section 54.408 of our rules in accordance with this conclusion.

(i) Fixed Broadband

57. We first discuss the minimum standards for fixed broadband service. In the *2015 Lifeline FNPRM*, we sought comment on "establish[ing] an objective standard that could be updated on a regular basis simply by examining new data about fixed broadband service." Although we recognized that "the prevailing benchmark for fixed broadband is the speed of the service," we also sought comment on data caps and whether to set a minimum data usage allowance for fixed broadband service. While some commenters opposed minimum service standards for fixed broadband, many other commenters suggested that minimum standards were necessary for both speed and data usage allowance. We believe that for consumers to fully benefit from the same type of Internet service that has "been subscribed to by a substantial majority" of Americans, those consumers must have access to services of both sufficient speed and data usage allowance. Accordingly, we establish minimum service standards for both speed and data usage allowance which both must be met for providers to receive Lifeline funds.

58. *Data Sources*. In response to the *2015 Lifeline FNPRM* commenters proposed various methods to set initial minimum service standards for fixed broadband: Some commenters proposed using specific numerical thresholds; others supported using existing Commission testing mechanisms to determine initial minimum service standards; and a third group of commenters supported "functional" minimum service standards with a focus on making sure that consumers could "perform a full range of online activities."

59. In the *2015 Lifeline FNPRM* we asked if we should "consider setting any minimum standards based on the FCC Form 477 (Form 477) data," and several commenters supported the idea. We also sought comment on using CAF standards in the Lifeline program. While a few commenters opposed using CAF standards because meeting the CAF standards would be too expensive for providers, or because the CAF standards would not provide sufficient flexibility for providers who do not currently meet the standards, other commenters supported using CAF standards to determine the initial minimum standards for fixed broadband.

60. We conclude that the minimum service standards for fixed broadband speed should be based on the service to which a "substantial majority" of consumers subscribe as determined using available subscriber data reported on the Form 477. As we discuss in greater detail below, while we do not formally define the term "substantial majority" for all supported services, we believe that 70 percent of consumers constitutes a "substantial majority" in the context of fixed broadband speeds. (While we conclude that 70 percent of consumers constitutes a "substantial majority" as it relates to fixed broadband speeds, we lack the data to precisely determine what percent of consumers subscribe to other modes of services at particular service levels. Despite this, we still set minimum standards for other supported services at levels that in our judgement constitute

a substantial majority of consumers based on the information available.).

61. We also conclude that focusing solely on the "functionality" of a consumer's Internet service would not provide a workable standard for the Commission to use when updating annual service standards because it would require the Commission to determine the numerical threshold of "functionality" on a regular basis. By using numerical thresholds indexed to what consumers actually subscribe to, the Commission will allow consumer usage to determine what speeds are "reasonably comparable."

62. Because providers already "report extensively on their offerings" on Form 477 twice a year, it is an appropriate repository for data to set and regularly update the minimum service standard for fixed broadband speeds. Additionally, the Commission previously emphasized that it uses Form 477 to "update our universal service policies and monitor whether our statutory universal service goals are being achieved." Because Form 477 provides an accurate picture of what services American consumers actually subscribe to, and because it is collected on a regular basis, we conclude that Form 477 provides the best data with which to set and update the minimum service standard for fixed broadband speeds.

63. In addition, for the fixed broadband data usage allowance minimum service standard, we conclude that the data usage allowance standards currently used in the Connect America Fund for rate of return carriers electing A–CAM support are appropriate. We base the initial data usage allowance standard on this CAF standard because we do not currently have a source of available data that could be used to determine what percentage of subscribers purchase offerings with certain data usage allowance limits. We therefore set the initial data usage allowance standard for fixed broadband at the CAF rate-of-return standard for carriers electing A–CAM support, which is 150 GB per month for fixed broadband. We further conclude that the minimum service standards for data usage shall be updated based on data in the Commission's Urban Rate Survey and other appropriate and relevant data sources. The Urban Rate Survey was originally created as part of the Commission's Connect America Fund initiative in part to allow the Bureau "to specify an appropriate minimum for data usage allowance allowances" in CAF, and we believe it can serve a similar purpose here. While we set the initial data usage allowance standard for fixed broadband based on the CAF rate-of-return standard for carriers electing A–CAM support, we also believe the Urban Rate Survey in the future will help guide the Bureau to determine the usage allowance most commonly offered in the fixed broadband marketplace. (We also encourage providers to explore options for increasing usage allowances for Lifeline consumers who are deaf, hard of hearing, deaf-blind, or have a speech disability and rely on video connection for Video Relay Services and point-to-point calls and other bandwidth-intensive accessibility functionalities.).

64. *Initial Minimum Service Standards.* While we conclude that Form 477 data will be used to set and update the minimum standards for download and upload speeds, we also conclude that the Connect America Fund rate-of-return standard is the best starting point for setting minimum service standards for data usage allowance. Finally, we recognize that for the purpose of updating the minimum standard for capacity, the Urban Rate Survey and potentially other data will be useful sources for the Bureau to consider.

65. *Speed.* We conclude that in order to determine what fixed broadband speeds a "substantial majority" of Americans subscribe to, we will use the 30th percentile of subscribed speeds based on Form 477 data. By using the 30th percentile, we arrive at a speed to which 70 percent of Americans already subscribe, and we conclude that 70 percent constitutes a substantial majority. Although the Commission has not previously defined what constitutes a "substantial majority," it has concluded that it is more than a simple majority. Based on the most recent Form 477 data, the 30th percentile of subscribed fixed broadband speeds is 10/1 Mbps. Put differently, this means that 70 percent of residential broadband subscriptions already meet or exceed 10/1 Mbps speeds. (To order the subscription data in Form 477 for the purposes of determining percentiles, residential subscriptions were ordered lexicographically by download speed and then upload speed.). Based on Form 477 data on what consumers actually subscribe to, we set the initial minimum service speed standards for fixed broadband at 10 Mbps for download and 1 Mbps for upload. An offering must meet both download and upload speed minimums to be considered to meet the minimum service standards.

66. *Usage Allowance.* As stated *supra* we set the initial usage allowance standard for fixed broadband at the CAF rate-of-return standard, which is 150 GB per month for fixed broadband.

67. *Updating Minimum Service Standards.* We conclude that Form 477 will be used to update the minimum service standard for fixed broadband speed. When updating the minimum service standards in the future, the Bureau will use data from the most recently available and usable Form 477. Using Form 477, the 30th percentile level of residential broadband service speeds reported nationally will be used as the speed component of the minimum service standard. We find that this benchmark represents a service standard that is consistent with our statutory directive in Section 254 of the Act. Accordingly, we conclude that using the 30th percentile of residential broadband speed is appropriate, because this level indicates that seventy percent of Americans subscribe to it, or something more robust.

68. For the fixed broadband minimum service standards, the Bureau will, on delegated authority, on an annual basis, release a Public Notice on or before July 31 notifying the public of the updated standard levels for speed and data usage allowance to be effective on December 1 for the next twelve months. The updated speed standard will be calculated using the above specified values from the most recent available Form 477. In the event the Bureau does not issue the Public Notice by July 31, or if any of the data required by the calculation are older than 18 months, the minimum service level for fixed broadband speed will be set at the greater of either (1) its current level; or (2) the fixed broadband speed standard used in the Connect America Fund for rate-of-return carriers. Because the Connect America Fund is also designed to provide advanced telecommunications services to America's consumers, we conclude that its fixed broadband speed standards provide an acceptable alternative in the event the Bureau does not complete its update in a timely manner.

69. For the fixed broadband minimum service data allowance usage standard, the Bureau will, on delegated authority, on an annual basis, release a Public Notice on or before July 31 notifying the public of the updated standard level to be effective on December 1 for the next twelve months. The updated fixed broadband minimum service standard for data allowance usage will be the greater of (1) an amount the Bureau concludes a "substantial majority" of American consumers already subscribe to; or (2) the Connect America Fund data usage allowance standard set for rate-of-return carriers.

(ii) Mobile Broadband

70. We next discuss the minimum service levels for mobile broadband services in the Lifeline program and revise Section 54.408 of the rules. In the *2015 Lifeline FNPRM,* we sought comment on whether minimum standards were appropriate for mobile broadband, and what criteria should be used to set those standards. Multiple commenters supported minimum standards for mobile broadband, while others were opposed. We agree with commenters who argue that some consumers only have access to mobile broadband, and that low-income consumers are particularly likely to only have access to mobile broadband. For these low-income consumers, it is vital that the offered service provides sufficient speed and capacity to allow the user to utilize all that the Internet has to offer. Accordingly, we conclude that minimum standards for both speed and data usage allowance are appropriate.

71. *Data Sources.* In the *2015 Lifeline FNPRM,* we sought comment on setting minimum service standards for mobile broadband. We specifically sought comment on setting a minimum standard for capacity at 1.8 GB per person per month, which is what the average American consumer used in 2014. Some commenters believed that requiring 1.8 GB would be too expensive for providers, or would require a significant charge for consumers, while others argued that 1.8 GB per month per subscriber would be insufficient for consumers without access to fixed broadband. While most commenters did not propose specific numerical thresholds, one commenter proposed requiring 1 GB of 4G data and unlimited 3G data. We are mindful that Lifeline is meant to support a household, as opposed to an individual, and we must take this into consideration when setting the proper minimum service standard for mobile broadband. Accordingly, as we discuss in more detail below, we conclude that after an initial schedule of minimum service standards, updated minimum service standards for mobile broadband data usage allowance will be based on calculation of a mobile data usage level by using data set forth in the Commission's annual *Mobile Competition Report* and other available data sources For the mobile broadband minimum service standard for speed, we rely on Form 477 data while also incorporating industry mobile technology generation (*i.e.* 3G, 4G).

72. *Initial Schedule of Data Usage Allowance.* We conclude that, in order to allow the Lifeline market an appropriate period to adjust to the introduction of mobile broadband into the program, we should adopt a phased-in schedule of minimum service standards for mobile data usage allowances. After the period of time addressed in the schedule, the regular updating mechanism for mobile broadband service will apply unless the Commission acts otherwise based on recommendations in the State of the Lifeline Marketplace Report. Beginning on the later of December 1, 2016 or 60 days after PRA approval, the minimum data usage allowance standard for mobile broadband will be 500 MB per month. Beginning December 1, 2017, the minimum data usage allowance standard for mobile broadband will increase to 1 GB per month. Beginning December 1, 2018, the minimum data usage allowance standard for mobile broadband will increase to 2 GB per month. Beginning December 1, 2019, the minimum data usage allowance standard for mobile broadband will be determined, and updated thereafter, based on the procedures below.

73. *Data Usage Allowance.* We conclude that after the phase-in of mobile data usage allowance standards, in order to update mobile broadband standards for data usage allowance in line with the principle of supporting services that a "substantial majority" of American consumers subscribe to, and given the types of data that are publically and regularly available, the minimum service standard for mobile broadband data usage allowance will be 70 percent of the calculated average mobile data usage per household. These values will be calculated as follows:

- First, the average number of mobile subscriptions per household will be determined by dividing the total number of mobile-cellular subscriptions in the United States, as reported in the *Mobile Competition Report* or by CTIA, by the total number of American households, as determined by the U.S. Census Bureau. This number will be rounded to the hundredths place. (Based on the most recent data, there are 3.03 mobile subscriptions per American household. [355,400,000/117,259,427]).
- Second, the number of mobile subscriptions per American household will be multiplied by the percentage of mobile subscribers who own a smart phone, as reported by the Commission in its annual *Mobile Competition Report,* or other publicly available data sources if necessary, in order to determine the number of mobile smartphone subscriptions per American household. Because this value should not include mobile subscriptions that are not data-capable, phones that are not data-capable will not be used when calculating the mobile broadband minimum service standards. Additionally, phones that are not data-capable have no impact on the average household's mobile data capacity. This product will be rounded to the hundredths place. (Based on the most recent data, there are 2.33 smartphone subscriptions per household. [3.03 * .77]).
- Third, the calculated average number of mobile smartphone subscriptions per household will be multiplied by the average data used per mobile smartphone subscriber, as reported by the Commission in its annual *Mobile Competition Report,* (*Eighteenth Mobile Competition Report* 30 FCC Rcd at 14609, Chart VII.B.2 (stating that the average smartphone user uses 1.361 GB per month of data) to determine the average mobile broadband data usage per household. This number will be rounded to the hundredths place and then multiplied by 0.7 (Based on the most recent data, this currently amounts to 2.22 GB per month per household [2.33 * 1.361 * 0.7]) to adjust for the fact that in these circumstances a "substantial majority" of subscribers will use less than the average.
- Fourth, to provide more simplicity for providers, the per-household capacity will be rounded down to the nearest 250 MB. (Based on current data, the 2.22 GB household capacity leads to a minimum capacity standard of 2 GB per month).

74. If applied today, the minimum service standards for mobile data usage allowance would be set at 2 GB per month, however, as discussed *supra,* we choose to adopt a more gradual phase-in of this standard. After the phase-in, in order to update the minimum standard for mobile broadband capacity, the Bureau will perform the same calculations listed above with the updated data from the *Mobile Competition Report* and other specified sources.

75. *Speed.* We now set the initial value for the minimum speed standard for mobile broadband. As stated above, our initial mobile broadband speed standard is based on technology generation, while the updated standard will incorporate Form 477 data. A coalition of Lifeline providers indicated that the Commission should require mobile broadband providers to offer speeds of 3G or better, and we agree. We conclude that, to claim Lifeline support for a mobile broadband service, a provider must provide to the Lifeline subscriber a service advertising at least

3G mobile technology for at least the amount of data usage allowance specified by the minimum service standards. (Many mobile offerings will provide a certain amount of data at a certain speed and then provide data service beyond that amount at lower speeds. The minimum service standard requires the usage allowance standard be met at the speed standard). We believe this is an appropriate starting point given the Commission's actions in the Mobility Fund, where funding was limited to those who deployed networks at 3G or higher. The initial mobile speed minimum service standard will be effective beginning on the later of December 1, 2016 or 60 days after PRA approval.

76. *Updating Minimum Service Standards.* For the mobile broadband minimum service standards, the Bureau will on delegated authority, on an annual basis, release a Public Notice on or before July 31 notifying the public of the updated standard to be effective on December 1 of the same year for the next 12 months. After the phase-in of the data usage allowance minimum standards, the updated data usage allowance standard will be calculated using the above specified values from the most recent versions available of each required data source. In the event the Bureau does not issue the Public Notice by July 31, or if any of the data sources required by the calculations are older than 18 months, the minimum service level for mobile broadband capacity will automatically increase or decrease on December 1 of the same year from its previous level by the most recent year-over-year percentage change in smartphone data usage per household, as reported in the two most recent *Mobile Competition Reports.* The value of the previous minimum service level adjusted by the most recent year-over-year percentage change in smartphone data usage per subscriber will then be rounded up to the nearest 250 MB level. As an example, in 2013, the average smartphone user used 1.152 GB per month. In 2014, the average smartphone user used 1.361 GB per month. This indicates an 18.1 percent increase. If the Bureau did not issue the required Public Notice performing the calculations detailed above, the most recent minimum standard would be increased by 18.1 percent and rounded up to the nearest 250 MB level.

77. We recognize that the minimum service standards for mobile broadband speeds may not need to be updated as frequently as the mobile data usage allowance standard given the pace at which new mobile technology generations are deployed. We therefore direct the Bureau to consider updating the mobile broadband speed standard at the same time it updates the minimum service standard for mobile broadband data usage allowance. The Bureau should consider mobile Form 477 data and other relevant sources to determine whether the mobile speed standard should be updated. Because we recognize that the minimum standard for mobile broadband speeds may not need to be updated on an annual basis, it will not be subject to an automatic increase; instead, it will only be adjusted if the Bureau determines that it ought to be adjusted after determining that, based on Form 477 data or other relevant sources, the "substantial majority" principle is best satisfied by an adjusted speed standard. In any case, the same Public Notice updating the mobile broadband data usage allowance standard should also establish the mobile broadband speed standard in effect beginning December 1, regardless of whether it is adjusted from its previous level.

(iii) Fixed Voice

78. In the *2015 Lifeline FNPRM,* we sought comment on how to ensure fixed voice service is "reasonably comparable" and affordable to low-income consumers. After consideration of the record, we decline to set minimum service standards for fixed voice service and instead maintain the *status quo* in this portion of the Lifeline market. It is not apparent that in this segment of the market Lifeline consumers are likely to be offered a less robust service than non-Lifeline consumers. In the fixed voice segment, providers typically apply the Lifeline discount to the price of the generally available residential voice service. In this way, the same services available to non-Lifeline customers are made more affordable to Lifeline customers. Additionally, while numerous commenters emphasize the need to retain fixed voice as a supported service, no commenters stated that specific minimum service standards for fixed voice service are necessary. Accordingly, we see no need at this time to intervene in such a situation.

(iv) Mobile Voice

79. In the *2015 Lifeline FNPRM,* we proposed establishing minimum service levels for voice-only service, and we sought comment on requiring providers to offer unlimited talk and text to consumers. Commenters emphasized that voice-only service remained an essential part of the program, at least until the IP-enabled transition is complete, and many other commenters supported requiring providers to offer unlimited talk and text. While some providers argued that minimum standards for mobile voice are unnecessary or "uneconomical," we believe that requiring mobile voice providers to offer 1,000 minutes to consumers is consistent with our statutory directive to ensure that Lifeline consumers have access to the same services to which a substantial majority of American consumers subscribe. While we conclude that requiring providers to offer 1,000 minutes is appropriate, we are also mindful of providers' concerns about the affordability and feasibility of immediately requiring providers to offer 1,000 minutes and the resulting disruption to current Lifeline subscribers. Accordingly, we adopt a transition period beginning with an initial minimum standard of 500 voice minutes per month increasing over time to 1,000 minutes on December 1, 2018. We also at this time decline to include texting as a supported service, and thus we also decline to follow some commenters' suggestion that we set a minimum service standard for texting.

80. Based on recently available data, it is clear that a "substantial majority" of American consumers already subscribe to plans that offer 1,000 or more minutes, because "none of the smartphone plans for the United States have limited minutes," and 77 percent of cell phones in the United States are smartphones. Accordingly, we conclude that Lifeline providers that seek support for mobile voice-only service, after the transition set out here, must provide 1,000 voice minutes in order to satisfy the minimum service standards until mobile voice is no longer a supported standalone service. Because we will require mobile voice providers to offer at least 1,000 minutes beginning on December 1, 2018, the mobile voice minimum service standard will not be updated annually after that date.

81. We therefore adopt the following transition for mobile voice minimum service requirements. The minimum service standards for mobile voice are as follows. Beginning the later of December 1, 2016 or 60 days after PRA approval, providers will be required to offer at least 500 minutes per month to mobile voice consumers. Multiple providers have indicated that they will be able to offer consumers 500 minutes a month, (To the extent that some of these providers suggest we should not at this time schedule any increase above 500 minutes, we disagree. Under the schedule we have adopted, providers will have well over 18 months to prepare for a phase-in of the 750-minute

minimum standard and another year to prepare for the phase-in of the 1,000 minutes requirement); and we accordingly conclude that this requirement is not unduly burdensome. Beginning December 1, 2017, providers will be required to offer at least 750 minutes per month to mobile voice consumers. Beginning December 1, 2018, and until voice telephony is no longer a supported service, providers will be required to offer at least 1000 minutes per month to mobile voice consumers. We believe this provides a gradual transition period that will allow Lifeline providers and consumers to adjust to the new mobile voice minimum standards reflective of the mobile voice plans offered to the substantial majority of American consumers.

(v) Bundled Offerings

82. In the *2012 Lifeline Reform Order,* we amended our rules to allow providers to offer bundled packages of voice and data service. In the *2015 Lifeline FNPRM* we sought comment on how bundles should affect the Lifeline support level. We now clarify that providers remain free to offer bundled offerings as a way to improve their service offerings and attract consumers. However, beginning December 1, 2019, when support for voice-only service is phased down, in order for Lifeline providers to receive the full $9.25 reimbursement from the program for services offered as part of a bundle, the broadband component of the bundle must meet the applicable minimum service standards. (If the broadband component does not meet the applicable minimum service standard but the voice offering does meet the applicable minimum service standard, then the provider may still receive the then-applicable benefit provided for voice-only service). We believe this requirement is necessary to ensure that Lifeline subscribers continue to receive robust broadband service while affording reasonable flexibility to the provider and choice to the consumer.

c. Application of the Minimum Service Standard

83. While numerous commenters supported minimum service standards, many commenters worried about reduced consumer choice, or providers being forced from the Lifeline market if they could not offer services that meet the minimum standard. We are mindful of these issues, but we conclude that allowing the Lifeline benefit to be used on services that do not meet our minimum service standards would lead to the type of "second class" service that the minimum service standards are meant to eliminate. One of the reasons behind adopting minimum service standards was our belief that such standards would "remove the incentive for providers to offer minimal, un-innovative services." If providers were able to collect support for services that did not meet our standards, this would lead providers to continue to offer low-quality services. For this reason, we require, for fixed broadband, that any Lifeline supported service meet both the speed and data usage allowance minimum standards.

84. We also decline to allow mobile broadband services to be supported if the service does not meet the minimum service standards for both speed and data usage allowance. We do not believe that mobile broadband speeds of less than 3G are sufficiently advanced to warrant Lifeline funding. Further, we believe the current wireless and Lifeline marketplaces would allow mobile service providers to structure their offerings in such a way that the minimum service standards would not promote robust service. For this reason, we require that any Lifeline mobile broadband service meet both the speed and data usage allowance minimum service standards. For mobile voice-only service, as long as it is supported as a standalone service and subject to the transition detailed above, the service provided must meet the minimum service standard.

85. In order to ensure that Lifeline service meets the minimum service standards, we require service providers to annually certify compliance with the applicable minimum service level rules. Accordingly, we amend Section 54.422(b) to require carriers to certify their compliance with these requirements on our Form 481.

d. Exceptions Where Providers Do Not Meet Minimum Service Standards

86. We next provide an exception to our minimum standard requirements targeted towards fixed providers who have yet to deploy broadband capable networks in specific geographic areas that meet the minimum service standards. While we are mindful of our statutory directive to ensure that residents of underserved areas have access to services that are "reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas," we have also recognized that many people, especially those living in rural areas, might not yet have access to broadband services that meet our minimum service requirements. Many commenters have similarly emphasized the different levels of infrastructure present in rural areas. In the *2016 Broadband Progress Report,* the Commission noted that 25 percent of residents of rural areas did not have access to download speeds of at least 10 Mbps.

87. We recognize that the necessary infrastructure is not present in all areas, and that there are providers which are not currently capable of offering services which meet or exceed the minimum service standards. Accordingly, we address commenters' concerns with a limited exception to our minimum service standards. This approach maintains our objective of providing robust service where available while also not precluding a subscriber from obtaining a Lifeline benefit in situations where the infrastructure does not yet support the minimum service standard. Additionally, our conclusion is consistent with Commission precedent, as the Commission has previously granted certain recipients of Universal Service funding waivers from our minimum service standards because of infrastructure constraints. As we explain in more detail below, the exception applies in the following circumstances.

88. *First,* we apply the exception only to fixed broadband providers. (47 CFR 8.2(d) (defining a fixed broadband service as a broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband Internet access service includes fixed wireless services (including fixed unlicensed wireless services, and fixed satellite services.). We find the exception is only appropriate for fixed broadband because fixed broadband is the mode for which there are still significant areas of the country in which locations do not have access to the minimum fixed broadband standards. While we acknowledge that some areas also do not have mobile broadband coverage meeting the minimum standards, there are far fewer of these areas. Further, we are concerned, given inherent differences in mobile and fixed technologies and the attendant business models of each, that an exception for mobile service could more easily be used to undercut our objective of supporting robust service in the Lifeline program. (More specifically, for mobile services we find that the business economics of the marketplace mean a mobile broadband provider could much more easily than a fixed broadband provider craft a business model with a set of very low usage allowance offerings for the purpose of triggering this exception to meeting the

minimum service standards. We find that allowing such behavior would undercut this Order's commitment to funding meaningful levels of robust service.).

89. *Second,* the exception applies only where the provider does not offer *any* generally available residential fixed broadband packages which meet the minimum service standards at a prospective subscriber's residence. Because we do not believe Lifeline funding should support "second-tier" service, we find that providers who meet the minimum service standards with a generally available residential offering to a location should not be eligible for the exception at the location where they meet the minimum service standards.

90. *Third,* the exception only applies if the provider offers a generally available residential fixed broadband service to the prospective subscriber with speeds meeting or exceeding 4 Mbps download and 1 Mbps upload. We believe this requirement is necessary to ensure that providers who offer "second-tier" service are not rewarded for failing to upgrade their networks. We delegate to the Bureau the rulemaking authority to increase, but not decrease, this speed floor as it determines is appropriate.

91. A provider qualifying for this exception may claim Lifeline support for a household even when providing service that does not meet the minimum standards for fixed broadband as long as the Lifeline discount is applied only to the purchase of its highest performing generally available residential offering that meets or exceeds 4Mbps/1Mbps. A provider will certify that it is providing the service in accordance with Commission rules, including that this exception has been appropriately applied. However, as always, the Commission will retain its audit authority and may use it to periodically evaluate whether a provider is complying with the rule.

92. Finally, while we do not at this time provide an exception to the minimum service standards for mobile broadband, our longstanding waiver rule permits the Commission to waive any rule "in whole or in part, for good cause shown." We accordingly will consider waivers on a case-by-case basis for providers who do not meet our minimum speed standard for mobile broadband in particular areas. Pursuant to our general waiver rule, waiver of the mobile minimum service standards for broadband would be appropriate only if special circumstances warrant a deviation from those standards, and such a deviation will serve the public interest. We could envision that such special circumstances and public interest benefits would most likely be present in cases in which a provider seeks a waiver to apply the Lifeline benefit to the fastest mobile broadband product it offers, but that product does not meet the minimum service standards for mobile broadband due to lack of a deployed network able to achieve that standard.

3. Support Levels

93. *Baseline Level of Support.* In the *2015 Lifeline FNPRM,* we tentatively concluded that we should make permanent the non-Tribal support amount of $9.25 per month. We now conclude that the non-Tribal support amount will be up to $9.25 per month. We believe that establishing a permanent support amount provides an additional amount of certainty for interested parties, and it allows for continued administrative simplicity by enabling more accurate funding need projections. While $9.25 will be the permanent support level which will apply to all modes of service other than voice-only service, the non-Tribal support level for voice-only service will be adjusted as specified below.

94. Many commenters argue that the current $9.25 support level may be insufficient to cover the total cost of the supported service. Other commenters support the adoption of "tiered" service levels, with the amount of Lifeline support varying with the service provided, and the provision of a greater benefit for broadband service and a smaller benefit for voice-only service. We partially adopt such proposals, because we conclude that a greater benefit amount should be offered for broadband providers to facilitate the program's transition to broadband.

95. Although we take no position on whether $9.25 will be sufficient to support the entire cost of supported service, we emphasize that Lifeline was created to provide affordable, rather than free service, and past Commission decisions have emphasized this point. Additionally, we believe that other changes made in today's Order, such as the creation of a National Verifier and the streamlined eligibility determination process, will lower Lifeline providers' costs, and those savings can be passed on to consumers.

96. *Support for Voice-only Service.* For voice-only service, we adopt a schedule indicating the level of Lifeline support provided for voice-only service. As discussed above, prior to December 1, 2019, voice-only service meeting the minimum service standards shall be supported by $9.25 per month. From December 1, 2019 through November 30, 2020, voice-only service meeting the minimum service standards shall be supported by $7.25 per month. From December 1, 2020 through November 30, 2021, voice-only service meeting the minimum service standards shall be supported by $5.25 per month. On December 1, 2021, no support generally shall be provided for voice-only service except in certain circumstances identified below, or unless the Commission, having considered the recommendations of State of the Lifeline Marketplace Report, orders otherwise. In all events, voice service may still be provided in the context of an offering receiving Lifeline support if bundled with BIAS meeting the applicable minimum service standards.

97. Although we decide generally to phase-out Lifeline support for voice-only service as of December 1, 2021, we create an exception where particular circumstances are met. Specifically, we preserve the final phase-down level of Lifeline support ($5.25) even after December 1, 2021, for the provision of voice-only service to eligible subscribers by a provider that is the only Lifeline provider in a Census block. In particular, in any such Census block, such a provider will continue to receive $5.25 per month in federal Lifeline support for providing voice telephony service meeting the minimum standards to eligible subscribers, and thus will discount such voice service in the amount of the support received in accordance with our Lifeline rules.

98. Although we conclude that Lifeline should transition to focus more on broadband Internet access service given the increasingly important role that service plays in the marketplace, we remain mindful of the importance historically placed on voice service. We also recognize that although we provide a transition during which support is phased down, consumer migration to new technologies is not always uniform, and certain measures to continue addressing the affordability of voice service may be appropriate consistent with the objectives of Sections 254(b)(1), (b)(3) and (i). At the same time, in implementing Section 254 the Commission has a "responsibility to be a prudent guardian of the public's resources." Collectively, this persuades us that although it remains appropriate to use some universal service resources for Lifeline voice even after such support otherwise generally has been phased out, we should prioritize supporting, in an administrable way, those areas where we anticipate there to be the greatest likely need for doing so.

99. Balancing those objectives, we conclude that the pre-December 1, 2021, level of Lifeline support—$5.25—will remain available even after December 1, 2021, for a provider to provide voice-only service to eligible subscribers in any Census block where it is the only Lifeline provider. Although one theoretically could imagine targeting this continued Lifeline support for voice-only service in other ways—*e.g.,* to other geographies, on the basis of certain demographic criteria, or otherwise—we are not persuaded that such other approaches would be as readily administrable, either in terms of identifying the area(s) or consumer(s) to be served with discounted service in implementing the Lifeline mechanism and/or in terms of our ability to estimate and predict Lifeline demand for purposes of budget evaluations. (As described below, data sufficient to initiate the analysis required under our approach will already be available to the Commission as part of its implementation of universal service support.).

100. Further, having focused on these areas, we conclude that it makes more sense to provide any continued Lifeline support for voice-only service to the existing, single ETC serving the relevant Census block, rather than necessitating the designation of an entirely new ETC simply to serve this post-phase out role, particularly given that the Commission is phasing out Lifeline support for voice-only service more generally. With respect to any such Census block, Lifeline support for voice-only service provided by the sole Lifeline provider shall remain in place—together with the ETC's obligations as a Lifeline provider (This assumes that the ETC has not qualified for the conditional forbearance described in Section III.E.2.c (Forbearance Regarding the Lifeline Voice Service Obligations) or relinquished its ETC status in relevant part)—until the first year after the Commission (or the Bureau, acting on delegated authority) announces that a second Lifeline provider has begun providing service in the Census block.

101. For purposes of identifying the providers and Census blocks initially subject to this rule, we direct the Bureau to conduct a process to identify the Census blocks where there only is one Lifeline provider. The results of that initial process should be announced at least six months prior to the date on which support for standalone voice is scheduled to phase down to $0, *i.e.,* by June 1, 2021. The Bureau will have substantial data available to it by the time this process would need to occur in order to identify proposed Census blocks, and providers, that would (or would not) be encompassed by this continued Lifeline support for voice-only service. In particular, data will be available from the NLAD, from states that previously opted-out of the NLAD, and from the National Verifier, among others. This list shall be updated on an annual basis, such that support for standalone voice service provided by the relevant provider—and thus any accompanying obligation to offer service discounted by passing through the Lifeline support—shall end in a census block as of December 1 of the year that the Bureau identifies the census block as being served by more than one Lifeline provider.

102. *Support for Bundled Service.* For a bundled voice and broadband service, the support level will depend on whether the voice and broadband components meet the minimum service standard effective at the time. If the broadband component meets the broadband minimum service standards (both speed and data usage allowance) then $9.25 per month of support shall be provided. If the broadband component does not meet the minimum service standards but the voice component meets the minimum service standard, then support shall be provided at the level in effect for voice-only service as explained *supra.*

103. *Other Issues.* We also address concerns raised by several providers claiming that they are unable to process any form of payment. While some Lifeline providers currently operate as prepaid wireless carriers, and therefore do not have dedicated billing departments, these providers nevertheless collect revenue from both Lifeline and non-Lifeline customers, such as through the purchase of reload cards, and they appear to be able to receive funds either via online payment or by mail. Many of these providers partner with physical retailers who provide locations for Lifeline providers to sell such cards or even process payments. In addition, we also highlight the flexibility provided for providers under the rules we adopt. Since the $9.25 of monthly support must only be applied to an eligible service provided for a month's time, and since we do not mandate pricing or any terms of payment for the Lifeline-supported service, a provider has a wide range of options for collecting additional revenue from the consumer if it so desires. For example, a provider may choose to have the consumer make a one-time payment upon enrollment, monthly payments, or payments on a more flexible schedule. A wide variety of approaches are possible, thus allowing providers the ability to find approaches to their business which work best for their customers. In sum, we are confident that a dynamic and competitive Lifeline marketplace will adapt to the changes we make.

104. Finally, we address the issue of whether the Lifeline program should support the cost of handsets or customer premise equipment. In the *2015 Lifeline FNPRM,* we sought comment on whether to include the cost of Consumer Premise Equipment (CPE) when determining a service's affordability. While many commenters stated that the cost of CPE must be considered, and that the Commission should provide a subsidy to facilitate the purchase of the equipment, we do not believe that such a subsidy is warranted at this time. Past Commission precedent makes it clear that Lifeline, with the exception of a brief period after Hurricane Katrina, has been used to fund services, and not equipment. At this time we see no reason to deviate from that approach. While we do not separately fund the purchase of equipment, we encourage the private sector to work collaboratively with the Lifeline program and Lifeline providers to help make devices more available. We further encourage Lifeline providers to explore options for offering accessible devices for consumers with disabilities.

C. National Lifeline Eligibility Verifier

105. In this Section, we establish a National Lifeline Eligibility Verifier (National Verifier) to make eligibility determinations and perform a variety of other functions necessary to enroll eligible subscribers into the Lifeline Program. The National Verifier is more than simply a piece of technology; it is a system relying on both human resources and technological elements to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC, and the Commission. As described below, the National Verifier will have both electronic and manual methods to process eligibility determinations and will have at its center a Lifeline Eligibility Database (LED), which will contain records of all subscribers deemed eligible by the National Verifier. The National Verifier will also engage in a variety of other functions, such as, but not limited to, enabling access by authorized users, providing support payments to providers, and conducting recertification of subscribers, to add to the efficient administration of the Lifeline program. This Order directs

USAC, with the oversight and approval of the Bureau and OMD, to procure the necessary parts to the National Verifier. As described below, certain aspects of the implementation will be overseen mainly by the Bureau with additional oversight by OMD, as necessary and appropriate. We delegate to the Bureau and OMD all aspects of the development, implementation, and performance management of the National Verifier. We delegate to the Bureau authority to provide any rule clarifications or guidance with respect to the National Verifier. Along with the other important changes we make to the program today, the National Verifier is an integral part of our vision for the future of this program. We revise Sections 54.400 and 54.410 of the Lifeline rules to incorporate the National Verifier.

1. Objectives for the National Verifier

106. The Commission's key objectives for the National Verifier are to protect against and reduce waste, fraud, and abuse; to lower costs to the Fund and Lifeline providers through administrative efficiencies; and to better serve eligible beneficiaries by facilitating choice and improving the enrollment experience.

107. *Reducing Waste, Fraud, and Abuse.* As recognized by commenters, the National Verifier will close one of the main avenues historically leading to fraud and abuse in the Lifeline program: Lifeline providers determining subscriber eligibility. Before 2008 when the first non-facilities-based wireless providers started to enter the program, Lifeline was a traditional wireline voice service program and consumer eligibility determinations were necessarily made by the providers. Today, the Lifeline program is a modern, dynamic, multi-provider program with wireline, wireless, and broadband service. Modern Lifeline providers have varied business models and some have a greater financial interest in the eligibility determination, as the more subscribers they enroll, the higher the disbursement they will receive from the Fund. Therefore, commenters have noted that the program should remove the responsibility of determining eligibility from an entity who is providing service to the subscriber. Commenters agree that given today's modernization, adopting the National Verifier eligibility process to help enforce program rules and address concerns with eligibility determinations will greatly increase Lifeline accountability.

108. *Reducing Costs to Lifeline Providers.* As noted in the comments, by removing the responsibility of determining eligibility from providers, the Lifeline program will also be a more attractive business opportunity as providers recognize significant reductions in administrative and compliance costs. Commenters argue that variation across states has made the program more costly for multi-state providers who have had to use and comply with multiple eligibility systems and that the overall costs most likely exceed $600 million per year. By providing a central point of verification, Lifeline providers can avoid the patchwork of systems currently required to enroll subscribers in various states. By reducing compliance costs and burdens and attracting more Lifeline providers, the program will benefit from greater competition and, as a result, deliver more value to subscribers. Once implemented, the National Verifier functionality will further reduce administrative burdens for Lifeline providers by streamlining the flow of payments from USAC to providers. Further, commenters note that the risk of enforcement liability caused by the actions of third parties prevents providers from participating in the Program. By adopting the National Verifier, the risk of enforcement actions against providers for eligibility related issues will decline as the National Verifier takes on the risk of determining eligibility for subscribers. Overall, transferring the eligibility certification process away from providers will make it easier on providers to comply with the Lifeline rules.

109. *Facilitating Consumer Choice and Improving the Enrollment Process.* The National Verifier will also facilitate subscriber choice, and serve as a single, unified platform for administering the new modernized Lifeline program. Commenters note that Lifeline's current model of primarily determining eligibility through ETCs places significant limitations on the choices of eligible subscribers. The existing model leaves little room for participation by third-party organizations, such as schools, community-based organizations, or digital literacy groups, to assist eligible subscribers in understanding the value of the Lifeline benefit as well as navigating the process of seeking an eligibility determination. As we move to a broadband-supporting Lifeline program, we agree with commenters that it is critical to provide maximum subscriber choice as well as enlist the assistance of third-party organizations to help subscribers get and stay connected with broadband. These comments note that organizations who do not have a financial interest in the provision of Lifeline benefits and have social motivations to help low-income subscribers will improve the integrity of and participation in the program. A subscriber-focused National Verifier will facilitate third-party participation by allowing them to help subscribers with eligibility questions and in applying the benefit to a Lifeline-supported service.

2. Functions of the National Verifier

110. As supported by the record, we establish the National Verifier and explain how its core functions will achieve each objective described above. The National Verifier is a comprehensive integrator of processes and systems. The National Verifier will, first and foremost, determine subscriber eligibility for the Lifeline program. It will also perform other necessary functions, such as enabling Lifeline providers to verify eligibility of a subscriber, providing access to authorized users, and providing support payments to providers. At the core of the National Verifier will be the Lifeline Eligibility Database (LED), which will contain a list of Lifeline eligible, non-duplicative potential subscribers. (As described below, USAC may propose to the Bureau how and whether the information in the NLAD can or should be used to populate the LED). While we set forth the basic functions and structure below, we direct USAC to work with the Bureau, and OMD as appropriate, to implement the National Verifier and to make administrative and efficiency improvements consistent with the core elements described below.

111. *Determination of Subscriber Eligibility.* A primary function of the National Verifier will be to determine eligibility for potential Lifeline subscribers in a manner that is cost-effective and administratively efficient. As revised by this Order, subscribers will demonstrate eligibility for the Lifeline program by showing proof of enrollment in specific Federal and Tribal programs. These programs, such as the Supplemental Nutrition Assistance Program (SNAP) and Medicaid, have extremely robust program integrity and enrollment procedures. By using these programs as determinants of eligibility here, the Lifeline program can draw upon their vast fraud prevention and program integrity capabilities. As recommended by commenters, the eligibility certification process will have both manual and electronic components to accommodate the needs of subscribers. Manual certification will use human review of documents and other

information to assess eligibility, while electronic certification will rely on communications between the National Verifier and other systems and databases. (We direct USAC to propose acceptable documentation for the manual review to the Bureau. In particular, USAC shall consider how the National Verifier can address possible misuse of eligibility documentation (*e.g.* SNAP cards lacking identifying information)). We agree with the commenters that the program databases checked should, to the extent possible, include those owned by states, (For example, the SNAP program uses databases that are owned by the states), those owned by Federal entities, or those owned by other entities. (For example, the Supplemental Security Income program uses databases that are owned by the Social Security Administration). We expect that the National Verifier will be able to accommodate and utilize many of the varying state databases available. We also envision that the electronic certification process will produce at least near real-time results.

112. Both the manual and electronic approaches will apply program rules, including identity verification, as necessary, to determine a subscriber's eligibility. (For example, if a state administrator verifies identity in the same robust manner as the federal identification verification check, USAC may propose to the Bureau to rely on the state's check). The National Verifier will also check to ensure that the subscriber is not a duplicate of any existing subscriber already receiving a Lifeline benefit. By checking this, the National Verifier will reinforce and build on the NLAD to enforce Lifeline's one-per-household rule, and prevent duplicates. Subscribers will be able to submit information about themselves (*e.g.* such as verifying identity and documenting the basis for eligibility) to the National Verifier through a variety of methods, such as via mail and an online portal, and certify their eligibility. (USAC currently maintains a list of documents that can be used to establish identity. Commenters have suggested that improvements be made to the documents used to establish identity. Thus, we direct USAC to review the Web site list and propose to the Bureau changes to the list.). The National Verifier will also have a dispute resolution process whereby subscribers found to be ineligible may have an opportunity to dispute the finding. (We direct USAC to propose a process for dispute resolution to the Bureau for approval for the National Verifier).

113. The National Verifier will have both a manual and electronic certification process. We agree with commenters that our long-term goal should be to determine the eligibility of most subscribers through the more efficient means of electronic certification. We recognize that electronic certification of eligibility will generally have lower long-run costs relative to labor-intensive manual certification. We have streamlined the programs used to determine eligibility for Lifeline to those that have substantial automation and electronic process in place already. We direct USAC to seek the most cost effective and efficient means to incorporate electronic eligibility certification into the National Verifier wherever feasible. We expect USAC and the Bureau to work closely with the states, other federal agencies, and Tribal Nations to foster partnerships that will help the National Verifier develop the most efficient pathways to determining subscriber eligibility. For example, USAC should consider co-enrollment with states, other federal entities, or Tribal Nations or coordination with other entities that have enrollment responsibilities to more efficiently determine eligibility. We believe such actions based on electronic certification will better support our objectives to reduce the costs to the Fund and to better serve subscribers with an improved certification process.

114. The National Verifier will implement a complete eligibility review prior to providing a Lifeline benefit. We believe that it is vital to deploy the National Verifier with the expectation that it will conduct comprehensive and timely reviews. In the *2015 Lifeline FNPRM,* we sought comment on whether we should implement a pre-approval process to mitigate delays in the review period. Commenters argued that completing full reviews of eligibility will reduce waste, fraud, and abuse. We agree with the comments filed and, at this time, do not adopt a pre-approval process that would allow Lifeline providers to claim Lifeline support for a subscriber prior to a full review. Only after a full review is complete may the Lifeline provider claim and receive support for the subscriber. Lifeline supported service must begin on the day that the Lifeline provider certifies it will begin claiming support for serving the subscriber. (Note that a provider could "claim" a subscriber in the Lifeline Eligibility Database (LED) but not claim support until a later time when service begins. The claiming process in the National Verifier will make it clear when the provider is certifying to providing service and therefore eligible to collect support for a subscriber.). If the subscriber is not listed and claimed in the Lifeline Eligibility Database (LED), the Lifeline provider has no claim on support.

115. *Population of the Lifeline Eligibility Database.* The LED will contain records of Lifeline-eligible subscribers. As such, another important function of the National Verifier will be to allow for cost effective and administratively efficient ways to populate the LED. (For the purposes of defining a framework for the National Verifier, "database" is not intended to have any technological meaning requiring the National Verifier to follow a specific path toward technically implementing these requirements. "Database" is meant as a general term denoting a collection of data organized for rapid search and retrieval. The Commission directs USAC to implement the National Verifier in accordance with this Section using the most appropriate technological means.). The National Verifier will populate the LED with all necessary subscriber records after determining the subscriber is eligible. However, this need not be the only method of populating the LED with eligible subscribers. We envision multiple other methods, including utilizing state databases, which are already being used today by current Lifeline providers in a number of states, and building on existing processes used by states and/or community organizations which interact regularly with low-income subscribers. Our objective is to provide multiple pathways to populate the LED with records associated with Lifeline-eligible subscribers in order to simplify the enrollment process for subscribers and Lifeline providers. We therefore direct USAC to work with the Bureau to develop other efficient and reliable methods of listing eligible subscribers in the LED. Additionally, USAC must develop processes regardless of the pathway used, to obtain subscriber consent to the collection, retention, use, and sharing of a subscriber's personally identifiable information, including information about their use of Lifeline services with USAC, the National Verifier, and other appropriate users. As described further below, the LED will also maintain information about the supported services of the Lifeline subscribers.

116. *Access by Different Users.* The National Verifier will also function as an interface for authorized users for

many different activities. We agree with commenters and anticipate that eligible subscribers, Lifeline providers, states, and Tribal Nations will require access to establish or verify eligibility. We also expect the National Verifier to have varying interface methods to accommodate these different groups of users. (For example, the National Verifier may have an interface that is consumer-friendly and geared towards subscribers. It may have another interface that is geared toward providers that may allow application programming interfaces (machine-to-machine interaction). We direct USAC to work with the Bureau to develop interfaces that promote the objectives of the National Verifier and serve the needs of users in a cost-effective and efficient manner.

117. *Access by Lifeline Providers.* For Lifeline providers, the National Verifier will support many functions, such as allowing permissible queries to the LED to verify if a subscriber is eligible, (The National Verifier will only permit queries which facilitate the purposes of the Lifeline program. After obtaining approval of the Bureau, USAC may implement useful administrative queries to facilitate the needs of the modernized the program) allowing the claiming of a subscriber as a Lifeline customer, and allowing reimbursement based upon subscribers served. For example, the National Verifier will allow Lifeline providers to easily confirm a subscriber's eligibility status in the LED by using an appropriate set of personal information provided by the subscriber. After obtaining authorization from the subscriber, Lifeline providers intending to initiate a supported service will use the LED to claim that subscriber as a Lifeline customer. By claiming the subscriber, the Lifeline provider will certify that it will be providing a Lifeline-supported service to the subscriber in accordance with Commission rules. Providers will be able to enter into the LED the correct support amount (non-Tribal or Tribal) for the claimed subscriber. We also agree with commenters who argue that the National Verifier should also allow Lifeline providers to relinquish subscribers in the LED, thus discontinuing support, in accordance with Commission rules. We expect that the technology used for the National Verifier will allow claiming and relinquishing either a single subscriber record or batches of records. However, irrespective of the technical abilities of the National Verifier, service providers must follow the Commission's rules on enrollment and de-enrollment.

118. *Access by Subscribers.* The National Verifier will also allow potential subscribers (we use the term potential subscribers here generally to refer to both successful and unsuccessful applicants to the Lifeline program), to contact it directly to initiate and complete eligibility determinations and applications for Lifeline service, to obtain information about Lifeline providers and services, and to resolve any issues through dispute resolution as recommended by commenters. The National Verifier may use standardized forms and easy-to-use processes to assist subscribers in completing applications. It will have internal controls and utilize document management processes to aid the submission of complete applications, regardless of the submission method used. (For example, applications submitted via a secure Web site should have standardized, mandatory fields that require input and provide error messages before advancing to the next screen.). During the application and certification process, the National Verifier will communicate with subscribers to notify them of application status at relevant milestones in the process. Subscribers will be notified of either an affirmative or negative eligibility determinations by the National Verifier. Once a subscriber is listed in the LED, he or she will be notified, and be given information such as, but not limited to, the manner in which the Lifeline benefit may be used, as well as information on services and Lifeline providers in their area. Subscribers must consent to providing the information to the National Verifier, should be made aware of what information is being stored and used by the National Verifier, and should also be allowed to view and modify their records in the National Verifier as appropriate. The National Verifier may also communicate with subscribers for other purposes related to the efficient administration of the program as determined to be necessary by USAC, with the approval of the Bureau.

119. We also expect the National Verifier to use a variety of methods to communicate with subscribers who have limited means of connection, both in terms of the mode used (such as mail, telephone, text messages, email, etc.) and in terms of form used (such as various languages and access for disabled individuals). The mode of communication from the National Verifier to the subscriber at a minimum must be appropriate and commensurate with the mode through which the subscriber initiated contact with the National Verifier or requested to be contacted. We also expect the National Verifier to provide access to subscribers with disabilities in accordance with all applicable laws and to provide service in multiple languages as directed by the Bureau.

120. *Access by States, Tribal Governments and State/Tribal Administrators.* As recommended by commenters, the National Verifier will also support access by states, Tribal governments, and state/Tribal administrators and will also support communications between it and the states. Commenters note that some states have already implemented processes for determining Lifeline eligibility for individuals in their states, and we seek to cooperate with such state efforts as we jointly continue to protect the integrity of the program and the subscriber experience with the Lifeline eligibility certification process. Recognizing that existing state efforts will provide a way to more efficiently and cost-effectively determine eligibility, we direct USAC, as part of its development and operation of the National Verifier to consider opportunities to coordinate and partner with states. USAC should ensure any partnership promotes the objectives of the National Verifier to improve administrative efficiency, better the subscriber experience, and prevent waste, fraud, and abuse in the program. (One commenter suggested that connection to a state database should only be mandatory if the provider has more than 5,000 subscribers in the state. While we do not impose such a policy here, we direct USAC to consider the most efficient ways to partner with the states). It is also imperative that a Tribal or state eligibility determination is congruent with the Commission's rules. Prior to initiating these Tribal or state partnerships, USAC must submit a proposed partnership plan to the Bureau indicating how it is congruent with the National Verifier and the Bureau must approve of establishing such a partnership as proposed by USAC.

121. *Support Payments Based on the National Verifier.* The National Verifier will also function as the default basis for determining support payments to providers. (After obtaining approval from the Bureau, we also direct USAC to implement administrative solutions to resolving concerns with the accuracy of the number of active subscribers in the database. For example, subscribers remain actively enrolled during the 30 day cure period following an initial 60 days of non-usage. Providers will be paid based upon the records of claimed subscribers in the LED absent some

other basis for suspending, delaying or declining to provide such support. (For a provider to receive Lifeline support for serving a claimed subscriber, not only must there be a record of the claimed subscriber in the LED, but the service provider must be acting in compliance with relevant applicable statutory requirements and Lifeline program rules. Moreover, Section 54.707 of the rules authorizes USAC to suspend or delay universal service support amounts if a carrier fails to provide adequate verification of its entitlement to such support upon reasonable request or if USAC is directed by the Commission to suspend or delay universal service support amounts. 47 CFR 54.707. In the 2012 Lifeline Reform Order, the Commission provided guidance to USAC regarding the procedures it should follow in the Lifeline context regarding the suspension or delay of universal service support amounts if a carrier fails to provide adequate verification of its entitlement to such support upon reasonable request under Section 54.707 of the rules. As also observed in the 2012 Lifeline Reform Order, the Commission has responsibilities to maintain the integrity of the universal service fund and will pursue recapture of funds and/or seek to impose penalties where warranted. Thus, in addition to the role of USAC audits under Section 54.707 of the rules and the associated guidance in the 2012 Lifeline Reform Order, the Commission itself can direct USAC to suspend or delay universal service support amounts under Section 54.707 of the rules, as noted above. In this context, we anticipate that the Commission could direct USAC to suspend or delay universal service support amounts, either wholly or in part, when the Commission has proof, or credible information, that leads it to reasonably believe, based on the totality of the information available, that all or part of a payment would be in violation of the statutes and regulations applicable to the Lifeline program. Furthermore, in extraordinary cases where advance notice would likely cause significant harm to the universal service fund, for instance, by hindering the possibility of recovering funds, the Commission reserves the right to direct USAC to initiate the suspension or delay of Lifeline support amounts even in advance of notice to the relevant service provider.) This approach will serve to enforce Commission rules and significantly reduce duplicates, ineligible subscribers, and improper payments. We direct USAC to provide the Bureau and OMD with a transition plan for phasing out the FCC Form 497, currently used to seek Lifeline support. With approval of the Bureau and OMD, USAC will begin executing this plan and moving to a system where support payments are based on the records in the LED. We also direct USAC to propose to the Bureau and OMD improved methods of providing payment to the Lifeline providers that will reduce costs and burdens to the Fund and to Lifeline providers. For example, we received comments from AT&T suggesting that payments could be received by providers as electronic funds transfers. USAC should consider comments such as these and provide recommendations to the Bureau as to whether the model of payment currently in place is the most efficient method of serving Lifeline subscribers.

122. Additionally, we direct USAC to consider how the National Verifier might facilitate initiatives that aggregate eligible subscribers' Lifeline benefits so as to streamline the payment of benefits and therefore encourage provider participation. The Bureau will work with USAC to establish procedures and guidance USAC can use to coordinate "aggregation projects" in the Lifeline program consistent with the objective of preventing waste, fraud, and abuse. At a minimum, to create an aggregation project, the Lifeline provider must certify that the aggregation project will provide Lifeline eligible service directly to the eligible low-income subscribers' residences, describe the technologies the Lifeline provider plans to utilize for that specific project, and certify that the service provided through the project will otherwise comply with all other Lifeline rules. We note here that aggregated benefit programs must meet the minimum standards set out in the Lifeline rules, as measured by the service provided to each individual subscriber. We therefore amend § 54.401 to enable payment for providers' servicing aggregation projects. Further, we direct the Bureau to work with USAC, as part of implementing the National Verifier, to provide Lifeline providers with guidance and procedures for creating aggregation projects and for enrolling subscribers in aggregation projects. (USAC's role will be to develop processes to ease and streamline the administration of aggregation projects by implementing special systems, technical support, and coordination efforts. USAC will not fund consumer outreach efforts but may provide administration and expertise to community-based organizations, housing associations, and institutions seeking to coordinate the aggregation of benefits). Finally, total reimbursement distributed to the Lifeline provider will be tied directly to the number of subscribers affiliated with an aggregation project who have been determined eligible for a Lifeline benefit.

3. Performance Management of the National Verifier

123. In this Section, we direct USAC to develop a robust performance management system to advance the objectives and to analyze, on an ongoing-basis, the effectiveness of the National Verifier. We recognize that our success with the National Verifier is integral to the Lifeline program. We provide below a range of components to be utilized in evaluating the performance of the National Verifier. Our list is not exhaustive, and we expect USAC, in consultation with the Bureau and OMD, to continue to update the performance of the National Verifier and its performance management system.

124. *Time of Review.* We first discuss the time it will take for the National Verifier to review a subscriber's eligibility. We expect that both the manual and electronic certification processes will be completed in a reasonable amount of time from the time of application receipt by the National Verifier to final eligibility determination and population of the LED. We expect that the National Verifier will develop review processes that balance the needs of subscribers to receive a decision quickly with our responsibility to conduct accurate eligibility reviews. To the extent it would improve the subscriber's experience and improve program efficiency, the National Verifier may implement any solutions, such as queuing, to manage demand. We also require the National Verifier to forecast and provide innovative solutions to enrollment fluctuations that may affect review times. At a minimum, the National Verifier should use project management processes, maximum automation, and flexible staffing to facilitate the rapid response time required to best serve the stakeholder community.

125. *Performance of the LED.* The LED will, at a minimum, maintain a list of subscribers for whom eligibility has been confirmed for Lifeline-supported services and a list of claimed subscribers. Recognizing that some providers and subscribers may have concerns about the frequency with which the LED is updated, we direct USAC to have the National Verifier modify and make available listings, de-listings, and other record changes in the

LED quickly, taking into account the need for reliable information and cost considerations of varying levels of service.

126. *Development Environment.* The National Verifier must include a development environment that can be used by interested parties to test the components of the National Verifier prior to the live date. The development environment should allow the National Verifier and stakeholders to test new functionalities before the National Verifier launches and as new functions are added.

127. *Use of the NLAD.* In order to build the National Verifier in an efficient and timely manner, we permit USAC to integrate or repurpose the NLAD in whole or in part as necessary. If the National Verifier has integrated into it all the responsibilities and functions of the NLAD, including but not limited to subscriber duplicate prevention and detection and identify verification, then USAC may propose to the Bureau to discontinue the NLAD. Further, records currently contained in the NLAD may be incorporated into the National Verifier if such incorporation promotes the operation of the National Verifier. We delegate to the Bureau the ability to revise the rules regarding the NLAD, including but not limited to Section 54.404, as necessary to allow for the transition and implementation of the National Verifier.

128. *Use of Acceptable Documents for Eligibility and Identity Certification.* The National Verifier will require subscribers to submit documentation for determination of eligibility. Given the great diversity in types of documentation available for establishing identity and eligibility across the states, territories, Tribal Nations, and eligibility portals, the National Verifier will maintain information on acceptable documentation types and will provide guidance about the types of documentation that are acceptable for establishing identity and eligibility for the Lifeline program. We also delegate to the Bureau to work with USAC to develop new forms, update or revise current forms, and/or retire forms if the Bureau believes it appropriate and necessary to aid program administration and to facilitate the implementation of the National Verifier.

129. *Document and Data Retention by the National Verifier.* The National Verifier will retain eligibility information collected as a result of the eligibility determination process. Lifeline providers will not be required to retain eligibility documentation for subscribers who have been determined eligible by the National Verifier. However, current Lifeline program rules regarding record retention of eligibility documentation will remain in effect for Lifeline providers who have determined the eligibility of a current subscriber when enrolling that subscriber, as this is necessary for Lifeline program evaluations and audits.

130. *Comprehensive Help Desk.* The National Verifier will have a help desk equipped to handle inquiries from all stakeholders, including subscribers, Lifeline providers, states, and aggregators. At a minimum, the help desk will have the ability to interact with stakeholders in multiple languages and for specified time periods.

131. *Training and User Support.* We direct USAC to develop and implement a training plan and ongoing National Verifier user support strategy. The training should include, but not be limited to, training for USAC and National Verifier personnel, training for Lifeline providers and states, and outreach packets for state PUCs and PSCs for subscribers and aggregators. We direct USAC to develop on-going training and user plans for all the stakeholders as needed.

132. *Security and Privacy of the National Verifier.* We direct USAC, working with OMD and its Office of the Chief Information Officer (OCIO), to ensure that the National Verifier will incorporate robust privacy and data security best practices in its creation and operation of the National Verifier. USAC must ensure that the National Verifier complies with all applicable laws and Federal government guidance on privacy and security and other applicable technology requirements such as those enacted by the Federal Information Security Management Act (FISMA), National Institute of Standards and Technology (NIST) publications, and the Privacy Act. As USAC seeks vendors to build the National Verifier, it should require that potential vendors demonstrate and incorporate in their proposals principles, including but not limited to, privacy-by-design and security-by-design principles for the National Verifier. Potential vendors must also include statements that allow sharing their proposals with USAC and the Commission for review and discussion prior to beginning the work. Any vendor selected must commit to abiding by the principles described here and must build and operate the National Verifier using agile development methodologies. We recognize that privacy and data security best practices change over time, so we direct USAC to ensure that the National Verifier's privacy and data security practices remain consistent with Federal government guidance, legal requirements and best practices, and to hire a third-party firm to independently audit and verify the National Verifier's compliance with these policies annually and provide recommendations based on any audit findings. USAC should report to the Commission annually the results of this third-party audit and verification, as well as its efforts to ensure compliance with regards to its privacy and data security practices. (USAC may incorporate this annual reporting requirement on privacy and data security practices in the *National Verifier Annual Report*).

133. The National Verifier must follow the NIST guidance for secure, encrypted methods for obtaining, transmitting, storing, and disposal of consumer and provider information. The National Verifier should also follow NIST guidance for firewalls, boundary protections, protective naming conventions, and adoption of strong user authentication requirements and usage restrictions to protect the confidentiality of consumer and provider information. (In discussing the privacy of consumer information, we do not limit it to active subscribers. The Verifier must also protect information gathered from applicants to the Lifeline program, whether unsuccessful or successful, and past subscribers.) We further direct USAC to ensure that, per NIST guidance, access to consumer and provider data is limited and subject to secure authentication systems for Verifier personnel, (The personnel for the Verifier, include but are not limited to, personnel at USAC, personnel at an entity procured by USAC to execute the functions of the Verifier, or personnel procured by USAC to support any of the functions of the National Verifier) for service providers and for other users who will have access to consumer or provider data in the possession or control of the National Verifier. We also direct USAC, per NIST guidance, to ensure that Verifier personnel working with consumer or provider data held by the National Verifier receive USAC's yearly rules of behavior, regular privacy and data security training. (We expect that USAC annually will update its rules of behavior as needed.) USAC must maintain records of the trainings and attendees. We further direct USAC, per NIST guidance, to ensure that the National Verifier limit its data collection to information it needs to perform its functions as National Verifier, and to promptly and securely dispose of data that it no longer needs. We direct USAC, in accordance with NIST 800–53 (The NIST 800–53 is a security publication

issued by NIST) to ensure that the National Verifier program has all of the necessary documentation and verification of authority to operate, yearly updates, continuous monitoring, plans of actions and milestones (POAMS) (These are required by NIST) and proper continuity and disaster recovery plans. The National Verifier must have subscriber notification procedures in the event of breach that are compliant with Department of Homeland Security (DHS) and OMB guidance. All these efforts and other guidance on privacy and security as FISMA NIST Publications, and the Privacy Act should be independently audited and verified by a third party, hired by USAC to assess its annual compliance with these policies annually as well as provide recommendations based on any audit findings. USAC must also provide the Commission with assistance and documentation should any of the above items or aspects of the National Verifier relate to audits or investigations of the Commission's compliance with federal laws and regulations.

134. *Reporting and Internal Controls Component.* The National Verifier will include a component responsible for coordinating with USAC on audits of internal controls to ensure consistency with the Lifeline program rules, for conducting surveys to ensure satisfaction in the performance of National Verifier personnel, and for producing reports to Lifeline providers, USAC, and the Commission. With respect to the reports to the Commission, the National Verifier must also produce reports necessary to ensure the Commission's compliance with federal rules and regulations pursuant to direction from the Bureau and OMD. The reporting capabilities will include the use of data analytics and fraud prevention software to help detect fraud before improper payments are made to Lifeline providers. In the event of data and security breaches, it will inform USAC and the Commission, and carry out the process of subscriber notification. We direct the Bureau to work with USAC and determine the appropriate reports to be incorporated into the National Verifier.

135. *Internal Controls and Procedures Manual.* We also direct USAC to create written procedures for the National Verifier, including but not limited to, procedures for all functions, processes, quality control standards, and internal controls. Subject to Bureau and OMD approval, USAC should use Government Accountability Office's (GAO) Green Book to serve as a guide to developing internal controls for the National Verifier.

136. *Unforeseen Circumstances and Clarifications.* Given the complex nature of the National Verifier and the importance of developing it in an efficient and timely manner, as stated above, the Commission delegates to the Bureau the role of providing USAC with any needed clarifications or interpretations of the Commission's orders for all aspects of the National Verifier, including but not limited to development, design, and maintenance of the National Verifier. Further, the Bureau may provide guidance to USAC concerning the National Verifier in the event of unforeseen circumstances. Any such guidance must be in line with the intentions of the Commission's orders for the National Verifier.

137. *National Verifier Procurement and Funding.* We direct USAC, working with the Bureau and OMD, to use efficient and cost effective means to manage the funding and procurement of the National Verifier. USAC will be primarily responsible for the procurement of both the human resources and the technological components of the National Verifier with oversight from the Bureau and OMD. (USAC has already obtained information from entities via its RFI issued in 2015). USAC may also propose to the Bureau and OMD to manage certain activities in-house, if most cost effective. We direct USAC to prepare a procurement plan for the National Verifier for review by the Bureau and OMD. We direct USAC to incorporate, as feasible, into the National Verifier contract requirements, payment terms and conditions that reasonably reduce the risks inherent in the ambitious task of developing the National Verifier and that incent timely completion of tasks while also considering cost considerations. USAC may also as part of developing and maintaining the National Verifier, procure from other entities (including other government entities), access to or connection with databases and systems if USAC determines this is the most reasonable approach, taking into consideration cost and other factors, to achieve the objectives of the National Verifier. In the event of disagreement, the Bureau and OMD will provide USAC with a final determination. The USF will fund the development and ongoing maintenance of the National Verifier, including all procurement of the various components, testing environment, and its ongoing activities.

138. *Stakeholder Engagement.* We direct USAC, working with the Bureau, to develop a plan to allow for meaningful collaboration from potential users on the administrative aspects of implementation of the National Verifier. We expect that potential users, such as service providers, states, Tribal Nations, and others, who may have valuable recommendations on a variety of implementation areas, including but not limited to, best practices for IT requirements, efficient interface for electronic and manual eligibility pathways, effective payment pathways, and effective communication strategies for consumer beneficiaries. We therefore encourage USAC to create a stakeholder committee to advise USAC on the "Draft National Verifier Plan" (described below). After such collaborative efforts conclude, USAC shall incorporate stakeholder input and recommendations into its "Draft National Verifier Plan", which it submits to the Bureau. The Bureau shall determine the appropriate path forward after balancing factors, such as but not limited to, cost, administrative efficiency, and ease of use. Overall, we believe that the National Verifier system that is developed with a high degree of collaborative input from users will best advance our goals.

139. *Implementation Timeline and Transition.* Implementation of the National Verifier is a considerable undertaking and will require significant resources from both the Commission and USAC. We here establish milestones to chart the implementation of the National Verifier. If USAC determines that additional time is necessary, it will inform the Bureau and OMD and request a reasonable extension.

140. Before December 1, 2016, USAC shall submit to the Bureau and OMD the "Draft National Verifier Plan" as the first implementation milestone. This plan will comprehensively describe the National Verifier to be developed and implemented. The plan will also set out a proposed strategy, estimated timeline, and estimated budget for progressively deploying each part of the National Verifier. As part of the strategy, this plan will explain in detail how USAC expects to procure services for the National Verifier, to partner with states, and to incorporate other federal databases and systems into the National Verifier. The Bureau and OMD will work with USAC to make any necessary revisions, and will approve the revised "National Verifier Plan." (While the National Verifier Plan is the official vehicle for approving the planned details of the National Verifier, USAC from the effective date of this order may begin taking actions in preparation for

developing and implementing the National Verifier).

141. After approval of the National Verifier Plan, on or before July 31 and January 31 of each year until the National Verifier implementation is complete, USAC will submit to the Bureau and OMD a National Verifier Implementation Update. This document will provide regular information to the Bureau and OMD on progress toward the approved National Verifier Plan.

142. Given the complexity of the National Verifier and wide variety of databases and systems to which the National Verifier may connect, we provide flexibility in how and when USAC chooses to incorporate such systems. We require the NLAD opt-out states to provide existing subscriber information to USAC by December 1, 2016, and ongoing thereafter, including any information regarding services that Lifeline subscribers subscribe to as described further below. (These states include California, Texas, Oregon, and Vermont. *See* Section III. E.2.c.ii. (Increasing Competition for Lifeline Consumers, ETCs that are not Lifeline-Only)). We set as an expectation that USAC will deploy the National Verifier in at least 5 states by December 31, 2017. We further expect that between January 1, 2018 and December 31, 2018 the National Verifier will be deployed in an additional 20 states. By December 31, 2019, we expect Lifeline eligibility will be determined in all states and territories using the National Verifier. We also expect that USAC may require testing and trials of the National Verifier prior to deployment and we allow this with the approval of the Bureau.

143. *National Verifier Deployment and Notification Responsibilities.* Because deploying the National Verifier in a state means the Lifeline eligibility responsibilities will be transitioned from ETCs or state administrators to the National Verifier, the deployment must be carefully managed and progressively achieved. When USAC is ready to deploy the National Verifier in a particular state, USAC must inform the Bureau of its deployment and transition plans in that state, in addition to providing sufficient advance notice to the Lifeline providers, state administrators and all other participants. This process will allow for a transparent, progressive and staggered roll-out of the National Verifier across the nation while retaining the Commission's oversight. Our rules requiring National Verifier eligibility certification will become effective in a state when USAC deploys the National Verifier in that state and we direct the Bureau to issue a notification to all interested participants providing information about effective dates and any other relevant obligations. Such notification will make clear which Commission rules will no longer be applicable in the state(s) where the National Verifier is deployed.

144. *National Verifier Annual Report and Data.* In addition to the specific reports required of USAC as part of the development and implementation of the National Verifier, once the National Verifier is fully operational in the first states, USAC will submit to the Bureau in January of each year a report on the operations of the National Verifier. This report will, at a minimum, provide a current overview of the National Verifier, including details and data about National Verifier operations consistent with our objective of making transparent, to the greatest extent possible, information about the Lifeline program. The report should also recommend improvements to the National Verifier and should particularly focus on ways to lower costs, increase efficiency, and improve the consumer and Lifeline provider experiences. In its annual reports on the National Verifier, we direct USAC to assess whether the National Verifier is effectuating the objectives described in this Section and whether there are ways to improve the performance of the National Verifier for all of its users, USAC and the Commission. Overall, we require the National Verifier to have the capability to report comprehensive program data information to promote transparency in the Lifeline program and allow for effective program evaluation.

D. Streamlining Eligibility for Lifeline Support

145. We next take steps to streamline eligibility for Lifeline support to increase efficiency and improve the program for consumers, Lifeline providers, and other participants. Beginning on the later of December 1, 2016 or 60 days following PRA approval, low-income households who qualify for and receive SNAP, Medicaid, Supplemental Security Income ("SSI"), Federal Public Housing Assistance ("FPHA"), or the Veterans Pension benefit will be eligible for enrollment in the Lifeline program. (Consistent with the new annual eligibility rules, subscribers already enrolled prior to December 1, 2016 under any of the retired eligibility criteria will be eligible until their next re-certification. We direct USAC to communicate with carriers and consumers as necessary to provide information where a retired eligibility program is being used.). We amend our rules to remove Low-Income Home Energy Assistance Program ("LIHEAP"); National School Lunch Program's free lunch program ("NSLP"); and Temporary Assistance for Needy Families ("TANF") from the default federal assistance eligibility for Lifeline. Finally, we do not modify the income-based eligibility nor the Tribal eligibility criteria.

1. Criteria for Streamlining Lifeline Eligibility

146. We make these reforms as part of our modernization of the Lifeline program to increase efficiency and reduce burdens on participants. In the *2015 Lifeline FNPRM,* we asked about various changes to the way consumers qualify for Lifeline in order to improve the eligibility determination process. In considering improvements, we first look to the federal assistance programs most used by low-income consumers who enroll in the Lifeline program. In choosing to focus on the programs most utilized by Lifeline subscribers, we will ensure continued access to Lifeline through well-established and often-used avenues. Moreover, in choosing programs that currently represent the highest enrollment rates in Lifeline, Lifeline will be more administratively efficient.

147. In evaluating the eligibility criteria, we next focus on the ability to develop long-term technological efficiencies by easily accessing systems and databases from other assistance programs. An efficient eligibility database to be used in the administration of Lifeline will streamline the program for consumers and providers alike. The ability to access eligibility databases for federal assistance programs is key to the success of the National Verifier. (For example, the Commission and SNAP have an existing data sharing agreement that allows current ETCs to verify if a low-income consumer is receiving SNAP benefits after coordinating with the state snap administrator.). In streamlining eligibility programs, we selected programs where a database or data sharing agreement could likely be achieved.

148. Finally, we remain committed to preventing waste, fraud and abuse within the Lifeline program. By relying on highly accountable programs that demonstrate limited eligibility fraud, Lifeline will greatly reduce the potential of waste, fraud, and abuse occurring due to eligibility errors. Federal assistance programs that have demonstrated limited eligibility errors offer the ability to leverage prevention efforts within Lifeline. We recognize that fraud is a

continuing concern within many federal programs and tying eligibility to other assistance programs that have limited eligibility error rates reduces the potential for problems within Lifeline.

a. Establishing Eligibility for Low-Income Veterans and Survivors

149. Today, we modify our rules to grant eligibility for Lifeline to low-income consumers receiving Veterans Pension benefit or Survivors Pension benefit. (Any reference to the Veterans Pension benefit as a default federal assistance program is meant to include the Survivors Pension benefit as well). The Veterans Pension benefit program is a means-based program that supports veterans and their spouses by providing up to $13,855 annually minus any countable family income.

150. *Discussion*. We add Veterans Pension benefit or Survivors Pension benefit to Lifeline's eligibility program. Providing assistance to America's veterans furthers the Commission's mission by specifically targeting a low-income group lacking broadband and voice access. To qualify for the Veterans Pension benefit program, veterans must have at least 90 days of active duty, including one day during a wartime period, and meet other means-tested criteria such as low-income limits and net worth limitations established by Congress. (The other means-tested criteria to qualify for pension benefits include that a veteran must be: (1) Age 65 or older with limited or no income, or; (2) totally and permanently disabled, or; (3) a patient in a nursing home receiving skilled nursing care, or; (4) receiving Social Security Disability Insurance, or (5) receiving Supplemental Security Income). Additionally, any surviving spouse or dependent of a deceased eligible veteran can qualify for the Survivors Pensions benefit. The program includes income and net wealth limitations to ensure the funding is sufficiently targeted to individuals in need. Further, many commenters support this change and have demonstrated an established need for armed forces veterans to access affordable phone service.

151. The Veterans Pension benefit also allows the Commission to foster a long-term technological solution to verifying eligibility. By collaborating with Veterans Affairs, the Commission will be able to foster a similar database access agreement as we have with the USDA FNS. (Note also that the Veterans Pension benefit can be used as an eligibility pathway even prior to incorporation of the VA's database as benefit recipients will already have or are able to obtain documentation from the VA). The National Personnel Records Center has digitized armed service personnel records, which will provide an efficient, streamlined solution to verifying eligibility. The Veterans Pension benefit also provides a highly accountable program to further help combat waste, fraud, and abuse within the Lifeline program. (The VA states that approximately 2.17 percent of pension outlays are improper. It is important to note that the improper payment percentage includes both under and overpayments. It is likely that the true eligibility error rate is marginally higher or lower than improper payment rate attributable to eligibility errors since payments may not be proportionally related to participation.). Further, Veterans Affairs is currently implementing the Veterans Benefits Management System ("VBMS") with the goal of improving processing accuracy of all benefit claims to 98 percent. VBMS, once fully implemented, will provide a completely electronic solution to incrementally validate application requirements, processes, and administrative functions. We find Lifeline will reduce waste, fraud, and abuse by leveraging the Veterans Pension benefits' accountability rather than duplicating eligibility determinations.

b. Relying on High-Participation Federal Assistance Programs

152. In our evaluation of the existing ways households may qualify for the Lifeline program, we first consider whether Lifeline eligibility programs are being utilized by subscribers for qualification and how many current subscribers enroll in Lifeline using the eligibility programs. The overwhelming majority of current Lifeline consumers enroll based on participation in SNAP, Medicaid, and SSI, and we maintain these programs in the Lifeline eligibility criteria. As of November 2015, nearly 80 percent of all consumers participating in Lifeline demonstrate eligibility by participation in SNAP, Medicaid, or SSI. Additionally, these programs capture 80 percent of the eligible low-income population under the existing Lifeline eligibility rules. In streamlining Lifeline to rely on the federal assistance programs that are most frequently used to provide access to Lifeline, we will leverage eligibility efficiencies provided by these programs. In sum, we conclude that continuing to use SNAP, Medicaid, and SSI as qualifying programs recognizes the attractiveness of Lifeline to SNAP, Medicaid, and SSI participants, as well as the administrative efficiencies. (While a small percentage of subscribers currently enroll in Lifeline by demonstrating participation in FPHA, Lifeline's goal is to provide meaningful access to needed telecommunication technology for low-income individuals The balance of factors discussed below demonstrate that FPHA provides highly accountable and broad assistance to low-income individuals with an advanced, centralized database to enable a long-term technological solution to Lifeline eligibility verification and recertification.).

153. We are persuaded that SNAP, Medicaid, SSI, and FPHA will maintain access to Lifeline support for those most in need of the Lifeline service. Specifically, SNAP assists 46 million low-income Americans with the majority of the households including children, senior citizens, individuals with disabilities, and working adults. Two-thirds of SNAP benefits go to households with children and three-quarters of recipient households have a child, an elderly member, or a disabled individual. Medicaid provides assistance to 40 million low-income seniors and other adults. Of these individuals, 11 million are non-elderly adults with incomes below 133% of the federal poverty guideline, and 8.8 million are individuals with disabilities. SSI provides assistance to 8.2 million low-income aged, blind, or disabled individuals. 7.2 million are disabled individuals under age 65, and 1.6 million individuals are either elderly-disabled or over 65 with an income less than $733 per month. FPHA provides assistance to 4.8 million low-income households comprising 9.8 million individuals. Of the 4.8 million assisted households, one-half are headed by elderly or disabled individuals. These programs target a broad audience of low-income households in need of improved access to voice and broadband services.

c. Fostering a Long-Term Technological Solution for Lifeline Eligibility

154. It is also vitally important that any qualifying federal assistance program enables Lifeline to access systems and databases in order to develop a National Verifier. Through the use of data sharing agreements and database access, the National Verifier must be able to effectively verify eligibility of potential low-income consumers without relying solely on self-certification or documentation. The existing databases for SNAP, Medicaid, SSI, FPHA, and the Veterans Pension benefit enable a long-term technological solution to eligibility determination.

155. Moving to a technological solution for Lifeline eligibility

verification will reduce the burden for low-income consumers in having to provide additional documentation and will reduce the potential risk to consumers' personal identifying information. The incorporation of existing database solutions will also reduce waste, fraud, and abuse of the program. While the transition to a National Verifier will not be immediate, our selection of qualifying assistance programs that permit easy technological solutions lays the groundwork for a successful National Verifier.

156. SNAP, Medicaid, SSI, FPHA, and the Veterans Pension benefit program all provide the potential for streamlined interactions between those programs' systems and the National Verifier. The current data sharing agreement with SNAP, for example, demonstrates an effective technological solution to Lifeline eligibility determinations. SNAP is administrated on the state level with Federal monitoring and oversight by the United States Department of Agriculture, Food and Nutrition Service ("USDA FNS"). The data sharing agreement allows current ETCs to verify if a low-income consumer is receiving SNAP benefits after coordinating with the state SNAP administrator and has enabled a technological solution for the verification of SNAP participation, for Lifeline enrollment purposes, in many states.

157. Medicaid, SSI, FPHA, and the Veterans Pension benefit program also have accessible systems and databases the National Verifier will be able to use. SNAP and Medicaid are often administered by the same state agencies, allowing for more efficient database access solutions. By reaching agreements with the state administrators, the National Verifier will be able to develop an electronic verification system that will reduce the administrative burden of the Lifeline program. SSI is federally administered by the Social Security Administration and the Veterans Pension benefit is administered by the Department of Veterans Affairs. Both have sophisticated computer matching and communication capabilities that can be utilized by the National Verifier to benefit the Lifeline program. FPHA is administered by the United States Department of Housing and Urban Development ("HUD"). HUD maintains a federal database containing participation information for all individuals receiving FPHA that can also be utilized by the National Verifier for eligibility verification and recertification.

d. Protecting Against Waste, Fraud, and Abuse by Utilizing Highly Accountable Programs

158. By relying on highly accountable programs that demonstrate limited eligibility fraud, Lifeline will greatly reduce the potential of waste, fraud, and abuse occurring due to eligibility errors. The Commission and stakeholders have made substantial strides to create a more efficient and effective Lifeline program and that has transformed Lifeline into a more accountable program that provides vital telecommunications services to low-income consumers. Lifeline's streamlined eligibility programs will continue to guard against waste, fraud, and abuse by allowing Lifeline to leverage efficiencies from federal programs with limited eligibility and enrollment error rates.

159. *Discussion.* SNAP is a meaningful assistance program for Lifeline because it maintains one of the lowest eligibility error rates of any federal assistance program. SNAP has a 99 percent accuracy rate in its eligibility determinations. (We distinguish between eligibility problems, which involve ineligible individuals enrolling in SNAP and are minimal, and SNAP trafficking problems, which occur when individuals sell or purchase SNAP benefits in exchange for cash or equivalents and, while prevalent in the last 15 years, have been greatly reduced in large part due to aggressive enforcement and prevention measures. Trafficking fraud, however, is not directly relevant to Lifeline's use of SNAP as an eligibility program because Lifeline only relies on the eligibility determination made by SNAP to determine eligibility in Lifeline). SNAP eligibility problems occur when an individual receives benefits, but does not meet the eligibility criteria for the program. To combat this concern, SNAP employs one of the most sophisticated quality control systems of any federal assistance program, ensuring that 99 percent of all recipients are eligible for the program. We find that SNAP's low eligibility error rate provides a high level of accountability that the Commission should leverage.

160. Medicaid provides similar efficiencies in eligibility determinations for the Lifeline program. Like SNAP, Medicaid has a low incidence of eligibility fraud (Medicaid's payment error rate due to eligibility errors is only 2.3 percent), and the United States Department of Health and Human Services, Office of Inspector General ("HHS OIG") has instituted new tools to combat waste, fraud, and abuse within Medicaid. By using data analysis, predictive analytics, trend evaluation, and modeling approaches to analyze and target fraudulent behavior, HHS OIG has substantially affected payment errors based on eligibility. Accordingly, we find that conferring eligibility based on Medicaid participation will support the prevention of waste, fraud, and abuse in Lifeline.

161. SSI demonstrates similar accountability. The Social Security Administration conducts routine audits between its own systems and those of other federal and state agencies to verify eligibility and determine if an SSI recipient's information is accurate. SSI has a limited overpayment rate resulting from eligibility errors. (This figure represents an estimate based on publically available data as SSA only reports overpayment (7.2%) and underpayment rates (1.9%). SSA additionally reports the major causes of payment errors of which 89% are attributable to eligibility errors. Therefore, the effective overpayment rate due to eligibility errors is approximately 6.3%. It should be noted that these error rates are based on payment and not participation; therefore, it is possible the eligibility error rate is marginally higher or lower as payments may not be directly proportional to participation). SSI has demonstrated continued accountability and commitment to combating waste, fraud, and abuse. For the same reasons SNAP and Medicaid provide eligibility and verification efficiencies, the utilization of the SSI program's robust eligibility verification process will benefit the Lifeline program.

162. Finally, HUD has undertaken many steps to ensure that FPHA is highly accountable. HUD actively employs an Enterprise Income Verification (EIV) system that matches data from the Social Security Administration and the National Directory of New Hires to provide income data. The EIV system is used to verify annual income and benefit information for FPHA participants, and further enables measures to prevent waste, fraud, and abuse within the program by providing auditable information to collect improper payments. FPHA has limited improper payments. (HUD reports an improper payment percentage of 4.01% due to eligibility errors.). HUD has demonstrated continued accountability and commitment to combating waste, fraud, and abuse. FPHA's accountable eligibility determinations will benefit Lifeline's efforts to combat waste, fraud, and abuse.

2. Removing Eligibility Based on Certain Federal Assistance Programs

163. We amend our rules to remove LIHEAP, NSLP, and TANF from the default federal assistance eligibility for Lifeline. In streamlining the eligibility criteria, we choose to remove these programs in part due to low enrollment in Lifeline. Further weighing our criteria for selecting eligibility programs, these programs do not offer the same advantages in developing a federal eligibility database, preventing waste, fraud, and abuse, nor better targeting of the neediest low-income households as SNAP, Medicaid, SSI, FPHA, and the Veterans Pension benefit.

164. *Discussion.* We amend our rules to remove LIHEAP, NSLP, and TANF from the default federal assistance eligibility for Lifeline. In doing so, we retain the programs used by the overwhelming majority of current Lifeline subscribers while retaining eligibility for millions of low-income consumers. (States will still be able to condition eligibility for state-specific lifeline payments, but will no longer be able to broaden federal Lifeline eligibility. This will allow states, like California, to continue to provide additional payments beyond current Lifeline benefits and develop the necessary state-specific eligibility criteria). By streamlining eligibility criteria, we will improve the administrative efficiency of the program and reduce the burden on consumers, providers, and the Fund. Only 2.74 percent of current Lifeline consumers enroll through LIHEAP, TANF, and NSLP combined.

165. Commenters argue that the elimination of these federal eligibility programs will create "eligibility gaps" where a low-income consumer would be eligible based on income, but other restrictions prevent access. Many commenters argue that limiting Lifeline eligibility will prevent access to the program by low-income consumers in need of support and that Lifeline's low participation rate suggests that we need to increase the number of eligibility programs to capture more consumers. However, we find that focusing on federal assistance programs that serve a broader range of the low-income households will leverage the reach of those programs. SNAP, Medicaid, SSI, and FPHA have high adoption rates among eligible households and currently account for 80 percent of program participation. Additionally, the programs target a wide variety of low-income consumers in different age and life situations, thereby alleviating commenters' concerns of "eligibility gaps" resulting from limiting Lifeline eligibility.

166. We disagree with those commenters who caution against removing NSLP and who argue that providing community-based eligibility or retaining federal assistance programs that allow for such eligibility, such as NSLP, increases administrative efficiency or appropriately protects the use of funds. First, eliminating NSLP as a qualifying program will affect very few participants since NSLP only accounts for 0.31 percent of the total participation in the Lifeline program. In addition, because there is substantial overlap between SNAP participation and NSLP participation, with 87 percent of NSLP students qualifying directly through SNAP participation of the household, we are confident there will be minimal disruption to qualifying households.

167. Also, NSLP cannot be effectively verified by a federal eligibility database. The federal administration of NSLP cannot authorize any access to the databases that maintain participation information. This would require duplicative efforts of the Commission to coordinate with state administrators to verify eligibility, as it currently must with SNAP and Medicaid. However, this access is complicated by federal regulations that would require written consent from all students' parents or guardians in order to disclose any information. The experience of state commissions demonstrates that this process is untenable and works against streamlining the administration of Lifeline.

168. Further, NSLP is currently undergoing program overhauls and transitioning to a community-based approach that will complicate the ability to determine individual household eligibility. The Community Eligibility Provision ("CEP") allows for participation in free or reduced meals for an entire school district, group of schools, or individual school if 40 percent of its students are "identified students." ("Identified students" are students that qualify without application due to participation in low-income assistance programs like SNAP, or students that are considered at risk of *hunger* due to a codified list of factors that includes being homeless, or in foster care). USDA adopted this change to eliminate the burden of collecting household applications to determine eligibility for school meals, relying instead on information from other means-tested programs such as the SNAP. This undoubtedly includes households that are not low-income, but still qualify for NSLP. Allowing Lifeline eligibility based on NSLP's CEP method could result in large numbers of non-low-income households qualifying for the Lifeline program and would greatly undermine the targeting of support to the low-income households. Given the extremely low number of Lifeline participants that use NSLP to establish Lifeline eligibility, coupled with the high overlap between NSLP and SNAP, the balance of factors supports removing NSLP as a qualifying Lifeline program.

169. We also have administrative concerns with using LIHEAP and TANF in the Lifeline program. Providers and state commissions have experienced difficulty in developing long-term, technology-based solutions for these federal eligibility programs. The majority of providers and state commissions choose only to provide database eligibility verification for a select group of programs, often SNAP, Medicaid, and SSI, due to the lack of centralized administration of many federal assistance programs, the wide varieties of documentation, differing technologies, and complications presented by controlling regulations. We intend to foster a centralized, technology-driven solution to eligibility determination, certification, and verification and the federal eligibility programs need to enable a database eligibility solution.

170. By using SNAP, Medicaid, SSI, FPHA, and the VA Pension benefit as eligibility avenues for Lifeline, the Commission will modernize the program while remaining committed to providing support to low-income consumers. Millions of low-income households remain eligible under the streamlined eligibility criteria while allowing the Commission to reduce the administrative burden to consumers, providers, and itself. Currently, LIHEAP eligibility accounts for only 1.23 percent of Lifeline participants. TANF accounts for only 1.20 percent. The retained programs account for 80 percent of all participants and enable 80 percent of all eligible low-income consumers to qualify with SNAP, Medicaid, SSI, or FPHA. The retained programs will allow the Commission to develop a long-term technological solution to determining and verifying Lifeline eligibility.

3. Independent Income-Based Eligibility

171. We next maintain our rules regarding income-based eligibility as an avenue to access Lifeline support. In doing so, we acknowledge that maintaining independent income verification allows low-income households to qualify for the program without being required to receive assistance from another program. However, we amend the Lifeline

definition of income to align with the Internal Revenue Service's ("IRS") definition of gross income to provide a clearer standard for eligibility determinations. By focusing independent income verification efforts by carriers and the National Verifier on checking readily available income verification sources and requiring consumer certification, we will reduce the potential for waste, fraud, and abuse of the program resulting from underreporting income.

172. In the *2015 Lifeline FNPRM,* the Commission sought comment on whether low-income consumers should be able to continue to qualify for Lifeline support based on household income. We recognized that, under the current program, less than four percent of Lifeline subscribers demonstrate eligibility based on income level and we questioned whether we could better target the neediest consumers given the relatively low number of consumers using income as their qualifying method.

173. *Discussion.* While a limited number of participants demonstrate eligibility through verifying their income, the eligibility avenue remains an important and independent access route into the program. Currently, three percent of Lifeline subscribers qualify by demonstrating household income. However, independent income-eligibility remains the only stand-alone avenue for access into the program. By ensuring low-income consumers can independently qualify for the Lifeline program, qualifying subscribers will not be denied access into the Lifeline program simply for not seeking other forms of assistance.

174. Maintaining income-eligibility requires a focused approach to verifying the low-income consumer's complete household income. Income verification has typically been more onerous for both the consumer and Lifeline provider than establishing eligibility through another program. Under the current definition of income, verifying income requires a provider to review documentation that demonstrates the household's income. Income includes all forms derived by all members of a household, including payments normally deductible from taxable income, like child support. While verifying income with the IRS can give a baseline, (for example, the IRS provides a system normally used by mortgage lenders to verify income of individuals with the individual's signed consent), the Lifeline provider must look to all sources of income within the household and sources that would be excluded from taxable income to ensure compliance with Commission rules. Thus, income verification is highly susceptible to intentional or unintentional underreporting of income. Commenters agree with this concern, noting the difficulty in ensuring that a produced tax return accurately represents income and that "virtually no Lifeline applicants present their tax returns to demonstrate eligibility" especially given the ease of demonstrating program eligibility. The consumer must present the household's income including "salary before deductions for taxes, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, lottery winnings, and the like." The only exceptions are for student financial aid, military housing and cost-of-living allowances, and irregular income from occasional small jobs. Additionally, the consumer must certify they have presented all income for themselves and their household.

175. We also amend the definition of income in Section 54.400(f) of our Lifeline rules to align with the Internal Revenue Service's (IRS) definition of gross income. This revised definition of income simplifies what a subscriber must demonstrate for income-based eligibility. Gross income, as defined by the tax code, includes all income for whatever source derived unless specifically excluded. By relying on a definition of income that subscribers use every year, we will greatly reduce instances of intentional or unintentional underreporting of income and will reduce the burden on the qualifying low-income consumer by eliminating the need for them to make additional income calculations. Further, tax information and employment information can readily be determined electronically through the IRS or third-party services. Aligning the Lifeline definition of income to mirror the tax definition of gross income, enables electronic verification by utilizing already reported information to a single source where previously this was not possible due to the expansive definition of income. (The Commission stresses the importance of verifying a complete household income picture when income eligibility is used. The Commission's rules have and continue to require that a consumer establish income for both themselves and for the rest of the household. This may require a low-income consumer to provide additional documentation or information for other individuals in the consumer's household to verify household income. These documents often contain additional sensitive and personally identifying information, and carriers must continue to protect this information in compliance with current Lifeline document retention and protection policies).

176. Continuing to allow income-based eligibility is also essential for Lifeline households in United States Territories. Due to the unique combination of high poverty rates (For the United States Territories currently receiving Lifeline support, the average poverty rate of the population is: Puerto Rico—45.4%; U.S. Virgin Islands—23.3%; American Samoa—57.8%; Guam—22.9%; Northern Mariana Islands—31.4%), and non-uniform federal assistance programs in the United States Territories, the United States Territories rely on income-based eligibility. Lifeline serves low-income consumers in all states as well as the Territories (United States Territories include all areas currently controlled by the United States and specifically the territories of the Commonwealth of Puerto Rico, American Samoa, the Commonwealth of Northern Mariana Islands, the United States Virgin Islands, and Guam), of the United States. However, the Territories do not have full access to the default federal eligibility programs for several reasons. For the United States Territories, the USDA offers Nutrition Assistance Block Grants (NABG) in lieu of operating SNAP in these areas. The same is true for Medicaid, which is operated similarly to block grants with an annual funding cap. Moreover, besides the Northern Mariana Islands, SSI is not available for individuals in the United States Territories.

177. Puerto Rico's Telecommunications Regulatory Board ("TRBPR") cautions against limiting program eligibility to only federal assistance programs. The differing administration and eligibility criteria for SNAP, Medicaid, and SSI requires income-verification remain in Puerto Rico and other United States Territories. For example, the income levels for the Nutrition Assistance Program for Puerto Rico ("PAN") range between 23.9 percent and 35.3 percent of FPG, which is substantially lower than SNAP. As a result, participation in PAN is 30 percent lower than if the default federal eligibility existed. Given the unequal treatment of Puerto Rico in federal assistance programs, TRBPR recommends retaining income verification. Retaining income-based eligibility prevents "qualification gaps" between low-income consumers in

states and those in the Territories. We continue to allow income-based eligibility for households with annual incomes of less than 135 percent of the FPG.

4. Tribal-Specific Eligibility Criteria

178. After careful consideration, we maintain the current set of Tribal-specific eligibility programs. The Commission embraced these Tribal assistance programs to encourage adoption among low-income residents on Tribal lands. We agree with commenters and find that the disproportionately low adoption of telecommunication services on Tribal lands, especially those in remote and underserved areas, makes clear that there is much more progress to be made in increasing penetration and adoption of Lifeline services.

179. In the *Lifeline Reform Order,* the Commission took specific steps to make Lifeline more inclusive for consumers living on Tribal lands. The Commission noted that consumers on Tribal lands did not qualify for Lifeline support because many Tribal members chose to participate in the Food Distribution Program on Indian Reservations (“FDPIR”) rather than SNAP. The Commission added FDPIR as a qualifying program because both SNAP and FDPIR have similar income-based eligibility criteria and that members of more than 200 Tribes, especially Tribal elders, currently receive benefits under FDPIR.

180. In the *2015 Lifeline FNPRM,* in the context of exploring the idea of streamlining eligibility for the program, we also sought comment on whether to remove eligibility based on federal Tribal assistance programs and the effect removing those programs would have on low-income subscribers and the Lifeline program. Specifically, we asked about continuing to use FDPIR and, more broadly, about overlap between Tribal-specific assistance programs and the other federal assistance programs used in the Lifeline program.

181. *Discussion.* Low-income consumers living on Tribal lands and receiving Bureau of Indian Affairs general assistance (“BIA general assistance”), Tribally administered Temporary Assistance for Needy Families (“TTANF”), Head Start (only those households meeting its income qualifying standard), or FDPIR remain eligible for Lifeline. BIA general assistance, TTANF, and Head Start were added in 2000 to encourage enrollment of low-income Tribal households because the programs were specifically targeted to Tribal members, and the addition of these programs helped remedy the barrier to Tribal participation in Lifeline caused by the other federal assistance program criteria. Additionally, the programs are means-tested and target household incomes similar to the other federal assistance programs.

182. The retention of these Tribal programs as Lifeline qualifying programs allows continued access to a specifically underserved group of potential subscribers. The Commission has noted previously that consumers living on Tribal lands have limited access to advanced telecommunications technologies. We recognize that retaining the programs may add additional complications to developing a uniform set of eligibility criteria to enable a long-term technological solution to eligibility determinations. However, we find that continuing to support low-income consumers living on Tribal lands through these Tribal-specific eligibility programs outweighs the limited administrative difficulties.

183. We make clear that our determination here to retain Tribal-specific eligibility programs does not prejudge a decision on any of the other Tribal-related or other outstanding issues for which the Commission sought comment in the *2015 Lifeline FNPRM* and prior Commission-level notices in these proceedings. For example, we are not at this time modifying the enhanced support amount or deciding whether to restrict Lifeline and/or Link Up support to certain carriers operating on Tribal lands or carriers serving certain portions of Tribal lands. These and other issues for which the Commission has sought comment and which are not addressed in this order, remain open for consideration in a future proceeding more comprehensively focused on advancing broadband deployment Tribal lands. (We note that the Commission recently sought comment on adopting rules to increase support to rate-of-return carriers in areas that include Tribal lands. The Commission will address related issues in both proceedings to the extent that it deems appropriate).

5. State-Specific Eligibility Criteria

184. We amend our rules to remove state-specified eligibility criteria for Lifeline support. While the Commission has traditionally allowed states to establish eligibility for the federal program, we ultimately conclude that Lifeline eligibility needs to be updated to allow for more efficient administration that enables comprehensive eligibility verification to continue to prevent waste, fraud, and abuse.

185. *Discussion.* We find that the benefits to the federal Lifeline program of removing state-specific eligibility criteria outweigh concerns presented by the states that object to this action. It is important to note that the changes to eligibility only apply to the federal Lifeline program. Thus, a state maintaining its own Lifeline fund will still be free to adopt any eligibility requirements it deems necessary. We make this change to simplify the administration of the Lifeline program. Lifeline currently allows for unique eligibility criteria depending on the state in which the consumer resides. (The Commission received comments from multiple State Commissions detailing that state's Lifeline program and the administration differences from the default federal program). This approach complicates administration at a federal level. Allowing the states to continue to develop tailored rules for federal Lifeline assistance would eliminate many of the efficiencies the Commission gains by modernizing the eligibility criteria. Streamlining the default federal eligibility criteria allows the Commission to transition the program to modern approaches for eligibility determinations, verification, and annual recertification. The selected list of federal assistance programs allows for a technology-based system by leveraging existing databases. Further, the programs are tailored to allow the Commission to reach needed data sharing agreements with the stakeholders in an efficient manner and state-specific eligibility criteria would minimize or eliminate the efficiencies the Commission is working to achieve.

186. The size, scope, and technology of the Lifeline program has changed drastically from 1997 when the Commission allowed state Lifeline eligibility to grant eligibility in federal Lifeline. The program has grown from 5.1 million households in 1997 to 13.1 million currently. Disbursements have grown from $422 million in 1997 to $1.5 billion in 2015. In this Order, we have instituted sweeping changes to the Lifeline program regarding verification of federal Lifeline eligibility on a national level. These require us to revisit the initial decision in 1997 to allow states to determine if eligibility verification was needed. Instituting a National Verifier requires specifically targeted federal assistance programs that have demonstrated use by current low-income consumers within the federal Lifeline program. State eligibility often relies on federal Lifeline eligibility programs, proving the criteria redundant in the majority of cases. In

fact, the state-specific assistance programs only account for 2.52% of total Lifeline participation. The administrative burden to verify each individual program for a National Verifier is not supported by the limited adoption of state-specific eligibility programs.

E. Increasing Competition for Lifeline Consumers

187. We recognize that in order to truly modernize the Lifeline marketplace, it is incumbent on the Commission to examine and reform three key aspects of providers' participation in the Lifeline program. Specifically, we must update providers' processes for entering the Lifeline program, providers' obligations as Lifeline providers, and providers' responsibilities when they may seek to exit the program. These three aspects of being a Lifeline provider—entry, service obligations, and exit—are crucial to providers' decisions about whether to participate in the program at all, and they are accordingly fundamental pieces of a revitalized Lifeline program. We expect that our actions today will encourage market entry and increase competition among Lifeline providers, which will result in better services for eligible consumers to choose from and more efficient usage of universal service funds.

188. In this Section, we continue to require Lifeline providers to be designated as ETCs, but we take several steps to modernize the processes and obligations necessary to obtain and maintain ETC status. We first establish our authority to designate Lifeline Broadband Provider (LBP) ETCs and create a designation process for such Lifeline Broadband Providers. This action preserves states' authority to designate ETCs to receive Lifeline reimbursement for qualifying voice and/or broadband services, while adding to that structure the option for carriers to seek designation as Lifeline Broadband Providers through the FCC.

189. We next establish reformed service and relinquishment obligations for different categories of ETCs. For Lifeline Broadband Providers, we establish a streamlined relinquishment process that gives providers greater certainty while retaining the Commission's ability to protect consumers. For Lifeline-only ETCs, those carriers that have received limited designations to participate only in the Lifeline program, we establish that such ETCs are eligible to receive support for broadband service but may choose to only offer supported voice service instead. For ETCs that are designated to receive high-cost support (High-Cost/Lifeline ETCs), we establish that such ETCs are also eligible to receive support for broadband service and forbear from requiring such High-Cost/Lifeline ETCs to offer Lifeline-supported broadband service, except in areas where the ETC commercially offers broadband pursuant to its high-cost obligations. We also establish conditional forbearance from existing ETCs' Lifeline voice obligations where certain objective competitive criteria are met.

190. These reforms balance low-income consumers' reliance on existing service providers while encouraging new market entry in the Lifeline program and creating a level playing field for existing and new providers. We expect that these reforms will unleash increased competition in the Lifeline marketplace, providing more choice and better service for the consumers benefitting from the program.

1. Creating a Lifeline Broadband Provider Designation

191. As part of our comprehensive modernization and reform of the Lifeline program, we must address the barriers potential Lifeline providers face when attempting to enter the program and the burdens existing providers shoulder while participating in the program. Through a number of actions, in this Section we modernize carriers' process for entering the Lifeline program to become LBPs, their obligations within the program, and the process for relinquishing their participation in the program. We also take certain steps to streamline the LBP designation process to encourage broader provider participation in the Lifeline program with the expectation that increased participation will create competition in the Lifeline market that will ultimately redound to the benefit of Lifeline-eligible consumers.

192. First, we decide that the Lifeline program will continue to be limited to providers that are ETCs. However, to ease the burden of becoming an LBP providing BIAS to eligible consumers, we improve the designation process, clarify LBP obligations, and modernize the relinquishment process to better reflect the modern competitive Lifeline market. We establish our authority to designate such ETCs pursuant to our responsibility under Section 214(e)(6) and take steps to streamline the LBP designation process to encourage greater nationwide participation in the program.

a. Lifeline Participation Limited to ETCs

193. We first maintain the existing, statutorily compelled paradigm for providing Lifeline service and continue to require Lifeline providers be designated as ETCs. At this time, we decline to extend Lifeline participation to non-ETCs. We find that continuing to require providers to be ETCs to receive reimbursement through the Lifeline program will protect consumers and facilitate continuing efforts to prevent waste, fraud, and abuse. As discussed below, however, we also take steps later in this Section to streamline the ETC designation process and ETC service obligations to increase provider participation in the Lifeline program.

194. In the *2015 Lifeline FNPRM,* the Commission sought comment on various means to increase competition among carriers serving Lifeline-eligible households. Among other potential ways to increase competition, the Commission asked for comment on a process for providers to participate in Lifeline that is separate from the ETC designation process required to receive high cost universal service support to encourage broader participation. The Commission also sought comment on re-visiting the Commission's 1997 decision not to provide Lifeline support to non-ETCs to encourage broader participation in the market, and its authority to provide Lifeline support to non-ETCs.

195. In response to the *2015 Lifeline FNPRM,* several commenters urged the Commission to eliminate the requirement that recipients of Lifeline support be ETCs through statutory interpretation or forbearance under Section 10 of the Act, arguing that such a change would increase provider participation in the Lifeline program. Some commenters reasoned that eliminating the ETC requirement would enable more community-based organizations to participate in the Lifeline program. Other commenters urged the Commission to retain the ETC requirement, arguing that the ETC requirement is necessary to prevent waste, fraud, and abuse in the program. Commenters opposing the elimination of the ETC requirement also argued that the Communications Act requires providers participating in the Lifeline program to be ETCs.

196. Regarding the Commission's authority to permit non-ETC providers to receive Lifeline funds, AT&T argues that Section 254(j) and Section 254(e) of the Act permit the Commission to expand Lifeline participation to non-ETCs. Public Knowledge argues that the Commission's decisions in the *2004 Report and Order* and *TracFone Forbearance Order* are inconsistent with the *Universal Service First Report and Order* on the issue of the Commission's authority to permit non-ETCs to

participate in the Lifeline program. Public Knowledge also argues that the Commission's prior orders failed to state that the Commission was departing from its prior interpretation of Section 254, so the Commission's controlling interpretation of Section 254 continues to be that expressed in the *Universal Service First Report and Order.* Some commenters also argue that the Commission may permit non-ETCs to participate in the Lifeline program by amending its rules or by forbearing from rules that currently prevent non-ETCs from participating in the Lifeline program.

197. We agree with the commenters who assert that the Commission should continue to limit reimbursement through the Lifeline program to ETCs, but we take significant action to address the concerns that animate suggestions that we provide support to non-ETCs. Requiring participating Lifeline providers to be ETCs facilitates Commission and state-level efforts to prevent waste, fraud, and abuse in the program, and serves the public interest by helping the Commission and state commissions ensure that consumers are protected as providers enter and leave the program. For federally-designated ETCs, in implementing Section 214(e)(6) of the Act, the Commission's rules state that common carriers must meet certain requirements to obtain an ETC designation, including certification to the relevant service requirements for its support, demonstrating the ability to function in emergency situations, satisfying consumer protection and service quality standards, and demonstrating financial and technical capability to provide Lifeline service (for Lifeline-only ETCs). For state designations, states that retain the relevant designating authority also ensure that carriers have the financial and technical means to offer service, including 911 and E911, and have committed to consumer protection and service quality standards. These structures that protect consumers and ensure carriers meet service quality standards ensure that the services supported by the Lifeline program serve the Commission's goals of achieving "[q]uality services" offered at "just, reasonable, and affordable rates." Considering the protections and standards already built into the ETC designation framework, we find that working within an updated ETC framework is a more sound approach to modernizing how carriers enter and exit the Lifeline program than creating entirely new registration processes and requirements for Lifeline providers.

198. We share commenters' concerns that requiring providers to obtain ETC designation could limit provider participation in the Lifeline program, but we address this concern by the targeted steps we take in this Order to streamline the ETC designation process, reduce compliance burdens, and implement a National Verifier. (For example, if a non-traditional provider like a school, library, or other anchor institution wishes to provide Lifeline-supported BIAS and can meet the streamlined requirements to enter the program and offer service as a Lifeline Broadband Provider, such a provider could seek designation to participate in Lifeline just as any other qualifying provider may). We are confident that these changes will encourage provider participation through reduced administrative burdens. Finally, because we decide not to permit non-ETCs to receive reimbursement through the Lifeline program at this time, we need not decide the Commission's authority to do otherwise. We next revisit the Commission's authority to designate ETCs offering BIAS in the Lifeline program under Section 214(e).

b. Jurisdiction To Designate Under Section 214(e)(6)

199. Having established that providers must become ETCs to receive reimbursement through the Lifeline program, we now turn to the issue of when the Commission retains authority to designate ETCs for the purpose of offering BIAS in the Lifeline program. In addition to including BIAS as a supported service in the Lifeline program, we must also determine who may provide that service. We establish the Commission's jurisdiction to designate broadband Internet access service providers as ETCs solely for the purpose of receiving reimbursement through the Lifeline program for providing BIAS to eligible low-income subscribers. We interpret Section 214(e) to permit carriers to obtain ETC designations specific to particular mechanisms of the overall universal service fund. We also find that state designations for this new LBP ETC designation would thwart federal universal service goals and broadband competition, and accordingly preempt such designations.

200. To provide guidance regarding our authority to designate LBPs under Section 214(e)(6), we clarify that a carrier need only provide some service or services—not necessarily the supported service—that constitute "telephone exchange service and exchange access" to qualify for designation by the Commission. Even though we anticipate that many providers will be able to meet the requirement of "providing telephone exchange service and exchange access," we also grant forbearance from the provisions of Section 214(e)(6) that require carriers to provide telephone exchange service and exchange access in order to seek designation as an ETC by the Commission under that Section.

201. Accordingly, LBPs will be designated by the Commission under the authority granted to it in Section 214(e)(6) of the Act. (We note that, in certain circumstances, we also have authority under Section 214(e)(3)). We find that these measures enable the Commission to efficiently designate LBPs and unlock the Lifeline program to new innovative service providers and robust broadband offerings for the benefit of our Nation's low-income consumers.

(i) Carriers Not Subject to the Jurisdiction of a State Commission

202. To facilitate the Lifeline program's goal of promoting competition and facilitating new services for eligible low-income consumers, we preempt states from exercising authority to designate Lifeline-only broadband ETCs for the purpose of receiving Lifeline reimbursement for providing BIAS to low-income consumers. (Some commenters assert that although the Commission has concluded that broadband Internet access service is interstate for regulatory purposes, at least some states still could have sufficient jurisdiction to perform an ETC designation. This question is moot insofar as we preempt any state jurisdiction to perform ETC designations specifically for Lifeline broadband purposes, and thus we need not, and do not, address the scope or contours of any state authority regarding broadband Internet access service.). Accordingly, Section 214(e)(6) grants to the Commission the responsibility to resolve carriers' requests for designation as an ETC for the purposes of receiving such Lifeline broadband support. (Further, we need not establish the Commission's jurisdiction to designate Tribally-owned and operated ETCs seeking to serve within the external boundaries of their Reservation, as that jurisdiction has already been established).

203. *Discussion.* Taking into consideration the comments we have received in the record on this issue, we now create a unified, streamlined FCC ETC designation process for providers seeking to receive reimbursement for providing BIAS. First, we find that it is

reasonable to interpret Section 214(e) as permitting the Commission to tailor the ETC designation process and ETC obligations to the particular element of the USF from which the provider is receiving funds. Next, we find that the Commission has authority to preempt states from designating LBPs and, in this limited circumstance, we preempt states from exercising any authority to designate providers as LBPs.

204. *Commission authority to designate where states lack jurisdiction.* Section 214(e)(6) establishes the Commission's authority to designate a common carrier "that is not subject to the jurisdiction of a State commission" as an ETC. The circumstances in which a carrier is "not subject to the jurisdiction of a State commission" under Section 214(e)(6) is ambiguous regarding whether the carrier must be entirely outside the state commission's jurisdiction or only outside the state commission's jurisdiction with respect to a particular service supported by universal service mechanisms, even if subject to state commission jurisdiction in other respects. As previously interpreted by the FCC, the jurisdictional inquiry under Section 214(e)(6) "should include, *but not be limited to,* whether a state commission lacks jurisdiction over the particular service or geographic area."

205. We interpret the inquiry as to whether a carrier is "subject to the jurisdiction of a State commission" under Section 214(e)(6) in light of the merits analysis required for designating a carrier as an ETC under either Section 214(e)(2) or (e)(6). In particular, the state (under Section 214(e)(2)) or the Commission (under Section 214(e)(6)) must find that the carrier seeking designation as an ETC will comply with the service obligations in Section 214(e)(1). In relevant part, Section 214(e)(1) requires ETCs to "offer the services that are supported by Federal universal service support mechanisms under Section 254(c)" at least in part using their own facilities "throughout the service area for which the designation is received."

206. To the extent that the Commission previously interpreted Section 214(e)(6) to only apply if the relevant state commission had no authority over any of the services offered by the carrier—or any of the services supported by the federal universal service support mechanisms (As originally implemented, ETC designations were not specific to a particular supported service or a particular universal service support mechanism, and thus, as interpreted and implemented by the Commission, ETCs' service obligations under Section 214(e)(1) encompassed the duty to offer all the supported services designated under Section 254(c)(1). Congress initially provided only for state ETC designations under Section 214(e) while simultaneously recognizing in Section 214(e)(3) that universal services could include interstate services.)—we now revise that interpretation to more closely match the services supported by federal universal service support mechanisms. In a 2014 Order, the Commission adopted an interpretation of Section 254(c)(1) that enables it to define universal service(s) under Section 254(c)(1) that differs among different rules (*e.g.*, among different universal service mechanisms). The Commission also has granted carriers forbearance from the 'own facilities' requirement in Section 214(e)(1) to enable pure resellers to be designated as ETCs, conditioned on them only obtaining Lifeline universal service support. Building on this, we conclude that regardless of the scope of ETC designations granted historically, Section 214(e) permits carriers to seek, and obtain, ETC designations specific to particular elements of the overall universal service fund. When they do so, we further conclude that the ETC's service obligations under Section 214(e)(1) mirror the scope of universal service(s) defined under Section 254(c)(1) for specific purposes of that element of the overall universal service fund (if there is a definition specific to that element). In other words, the Commission interprets "the services that are supported by Federal universal service support mechanisms under Section 254(c)" to mean only those services within the definition of universal service—as stated in the Commission's rules and orders implementing Section 254(c)—for purposes of the specific mechanism or mechanisms for which the relevant carrier is designated an ETC.

207. Further, interpreting the relevant scope of state jurisdiction under Section 214(e)(6) against the backdrop of the above interpretation and implementation of Sections 254(c)(1) and 214(e)(1), the relevant state jurisdiction would be jurisdiction specific to that scope of services defined as universal service for purposes of the specific mechanism or mechanisms for which the carrier is seeking designation as an ETC. Insofar as there is a specific mechanism or program within the overall universal service fund that, for instance, only has broadband Internet access as the supported service, a carrier that has obtained designation as an ETC just in that narrow context would bear service obligations that mirror that program's supported services, absent any other forbearance, waiver, or clarification by the Commission. Alternatively, carriers would remain free to seek broader ETC designations that would involve designation by the state commission.

208. We interpret Section 214(e)(1)'s service obligation, which applies to "the services that are supported by Federal universal service support mechanisms under Section 254(c)," to be limited to the services that are supported by the relevant Federal universal service support mechanisms under Section 254(c). Such an interpretation makes sense against the backdrop of the Commission's 2014 interpretation of Section 254(c)(1) in the *E-rate Modernization Order.* Insofar as the defined universal service(s) can differ among different elements of the overall universal service program, it makes logical sense for ETC designations and the associated service obligations to be able to be tailored to match—*i.e.*, to be able to designate carriers as ETCs for purposes of specific elements of the overall universal service fund and for their service obligations to match the supported services as defined for that purpose.

209. Section 214(e)(1)(A)'s reference to "mechanisms," rather than a "mechanism," does not prevent this interpretation because we interpret Section 214(e)(1)(A) to be drafted broadly enough to encompass the obligations of an ETC participating in multiple universal service mechanisms without demanding that the ETC provide services that are supported by universal service mechanisms in which that ETC does not participate. To interpret Section 214(e)(1)(A) otherwise would point to the conclusion that whenever the Commission exercised its authority to designate additional services for support in programs for schools, libraries, and health care providers, Section 214(e)(1)(A) would require ETCs participating in the Lifeline or High-Cost programs to also offer those additional services as services "supported by Federal universal service support mechanisms under 254(c)." Section 254(c)(3)'s specific reference to particular mechanisms within the overall universal service fund counsel against such a conclusion, and so we interpret Section 214(e)(1)(A) inclusion of "mechanisms" to simply mean that, to the extent that an ETC participates in multiple universal service mechanisms, its service obligations include the

services supported by all of the relevant mechanisms.

210. Section 254(e) bolsters this interpretation by both requiring that, in general, recipients of federal universal service support must be ETCs designated under Section 214(e) and simultaneously limiting ETCs to using the support they receive "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." At a high level, then, Section 254(e) supports the view that ETC designations (which generally are required for support)—and the associated service obligations under Section 214(e)(1)—should be tailored to the particular services "for which the support is intended."

211. We find further support for this interpretation in Section 214(e)(3). That provision expressly recognizes the possibility of carriers being designated ETCs with respect to either interstate or intrastate services, rather than more generally. In addition to supporting the general concept that ETC designations need not encompass all possible supported services, it also lends support to the view that Section 214(e)(1) service obligations can be specific to particular services. Section 214(e)(1) applies, by its terms, to ETCs designated under Section 214(e)(3), as well as those designated under (e)(2) or (e)(6). Interpreting Section 214(e)(1) only to impose service obligations associated with the particular mechanism or mechanisms for which a carrier is designated an ETC seems most consistent with the dual FCC and state roles established under Section 214(e)(3). Where both interstate and intrastate services are supported services, the FCC identifies the carrier best positioned to provide the interstate services and the relevant state commission identifies the carrier best positioned to provide the intrastate services. It is consistent with this framework for the carrier designated for interstate services by the FCC only to be obligated to provide those services under Section 214(e)(1). By the same token, it is consistent with this framework for the carrier designated for intrastate services by the state commission only to be obligated to provide those services under Section 214(e)(1). A contrary reading of Section 214(e)(1) would mean that the carrier designated an ETC by the FCC for interstate services also would have to provide the intrastate services even where the state commission identified a different carrier as best positioned to provide those services (and vice versa). Section 214(e)(3) appears designed to ensure that there is one ETC providing each supported service in areas that otherwise would have none, however. But if any single ETC designated under Section 214(e)(3) would have to provide all the supported services—both interstate and intrastate—the requirement for separate designations by the FCC (for interstate services) and the state commission (for intrastate services) would make little sense, since either one of those carriers individually would have to provide all the supported services.

212. Finally, as an implementation matter, we find that this interpretation counsels in favor of creating a separate element of the overall universal service fund to support BIAS for eligible low-income households in the Lifeline program. As a separate subset of the Lifeline mechanism in the overall universal service fund, supporting BIAS for low-income consumers, this separate element of the Lifeline program will help the Commission designate carriers seeking to become ETCs only in the specific context of Lifeline-supported BIAS. (This could be seen as roughly analogous to the current Rural Health Care mechanism, which includes a separate Telecommunications Program and Healthcare Connect Fund program).

213. *Preempting state designations for Lifeline Broadband Provider ETCs.* We next find that state designations for LBPs thwart federal universal service goals and broadband competition, and accordingly we preempt such designations.(In accordance with this preemption, we also amend Section 54.201 of the Commission's rules to clarify that a state commission shall not designate a common carrier as a Lifeline Broadband Provider. *See* 47 CFR 54.201(j)). In the absence of state jurisdiction to designate providers as LBPs providing BIAS through the Lifeline program, the Commission has authority to designate such ETCs under Section 214(e)(6).

214. A robust and successful Lifeline broadband program will serve the purposes of Section 254(b) by enabling the Commission to utilize universal service funds to give eligible low-income households affordable access to advanced telecommunications services. The success of that modernized program, however, depends on participation from providers to give eligible low-income households a choice between quality services. Many providers that may be interested in competing for Lifeline broadband funds are not currently designated as ETCs, and in particular larger providers with infrastructure and market offerings that span multiple states must be afforded a reasonable, clear pathway into the Lifeline broadband program.

215. Preempting the states from designating Lifeline Broadband Providers and permitting carriers to seek designation from the Commission for multiple states at once would serve the universal service principles of Section 254(b) by increasing low-income consumers' access to advanced telecommunications and information services at affordable rates. (In *TOPUC* v. *FCC,* the Fifth Circuit found that Section 254 was not such an unambiguous grant of FCC authority over intrastate matters to overcome the restriction on Commission authority in Section 2(b) of the Act. *See also* 47 U.S.C. 152(b) (expect as provided in specified provisions, "nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, . . ."). However, since here the preempted state actions have detrimental effects on the FCC's implementation of Section 254 as it relates to interstate services, we find this situation is distinguishable from the facts the court faced in *TOPUC.* Similarly, although Section 601(c)(1) of the 1996 Act provides that "[t]his Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments," Pub. L. 104–104, 601(c)(1), 110 Stat. 56 (1996), that does not alter the normal application of conflict preemption.). With respect to carriers seeking ETC designation in order to participate in a reformed Lifeline program as LBPs, we find that participation by such ETCs will advance the objectives of Section 254, but potential Lifeline providers would be deterred by a requirement to undergo ETC designation proceedings before dozens of state commissions and the Commission in order to launch a nationwide Lifeline broadband offering. As commenters have explained, a provider currently seeking ETC designation from multiple state commissions will likely face designation procedures and time frames that vary widely, lasting anywhere from a few months to several years. The state designation process may involve simply responding to staff's information requests or may include formal evidentiary hearings. Additionally, even if the state and federal ETC designation processes were entirely uniform, we are

persuaded that even just the burden of seeking designation from multiple states and the Commission is sufficient to discourage broadband service providers from entering the Lifeline program to introduce nationwide or similarly large-scale broadband offerings, because such a requirement means that a provider that has calculated that it needs to achieve a nationwide scale to justify introducing a Lifeline offering will be faced with potentially years of uncertainty while it pursues the necessary designations. We therefore find that state designation of LBPs conflicts with our implementation of the universal service goals of Section 254(b) in the Lifeline broadband rules adopted in this Order. (Under the Supremacy Clause, U.S. Const. art. VI, cl. 2, federal law preempts any conflicting state laws or regulatory actions that would prohibit a private party from complying with federal law or that "stand[] as an obstacle to the accomplishment and execution" of federal objectives. *Freightliner Corp.* v. *Myrick,* 514 U.S. 280, 287 (1995) (internal quotation marks omitted); *Hillsborough County, Fla.* v. *Automated Med. Labs., Inc.,* 471 U.S. 707, 713 (1985) (noting that "state laws can be pre-empted by federal regulations"). Because state ETC designations specifically for LBPs would conflict with our rules implementing Section 254, such authority also is not preserved by Section 254(f). *See* 47 U.S.C. 254(f)).

216. We find that the Commission should not similarly preempt state ETC designations for providers seeking Lifeline-only ETC designations to provide voice service, nor for providers seeking broader ETC designations that are not Lifeline-only and include high-cost funding. Today, multiple providers already serve the Lifeline voice market, and the states' traditional role in designating voice ETCs argues in favor of preserving the existing de-centralized structure for designating ETCs other than LBPs. We also note that Section 706 of the Telecommunications Act directs us to focus our efforts on removing barriers to investment in "advanced telecommunications services." We therefore focus our streamlining efforts on broadband services within the Lifeline program.

217. Additionally, the Commission has previously found that Section 706 of the 1996 Act authorizes preemption, and that conclusion is applicable to our current efforts to modernize the Lifeline program to support BIAS. "In light of Congress's delegation of authority to the Commission to 'encourage' and 'accelerate' the deployment of broadband to all Americans, we interpret Sections 706(a) and (b) to give us authority to preempt state laws that stand as barriers to broadband infrastructure investment or as barriers to competition." Section 706(a) grants the Commission authority to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." Indeed, Section 706(a) specifically states that the Commission "shall" encourage such deployment, using a variety of tools including "measures that promote competition in the local telecommunications market" and "other regulating methods that remove barriers to infrastructure investment." We find that our preemption authority falls within these categories listed by Section 706(a), and the Commission therefore has authority to preempt state laws that conflict with Section 706(a) by preventing market entry and competition in the Lifeline program.

218. Additionally, the Commission's *2016 Broadband Progress Report* found that "advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion." Accordingly, under Section 706(b), we are mandated by Congress to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." Here, we find that requiring prospective Lifeline Broadband Providers to seek separate designations before many states and the Commission constitutes a barrier to investment and competition in the Lifeline market. The greater carrier participation in Lifeline that would be fostered by preemption of state conditions unrelated to compliance with the Lifeline rules on relevant ETC designations would encourage the deployment of advanced telecommunications capability, such as BIAS. We also find that preempting these state conditions on ETC designations would "promot[e] competition in the telecommunications market" insofar as such state conditions otherwise would deter participation in the marketplace for Lifeline-supported broadband Internet access service.

219. More broadly, as the Commission has previously found, broadband Internet access service is jurisdictionally interstate for regulatory purposes. Although Section 214(e)(2) authorizes states to perform ETC designations and, under the *TOPUC* decision, does not itself preclude state conditions on such designations, there are indications in the Fifth Circuit's decision that it anticipated that those conditions would involve intrastate services subject to states' historical state law authority. Further, although the Commission has recognized state jurisdiction to collect data regarding BIAS, that is materially different from the imposition of substantive obligations on broadband Internet access service.

220. In addition to declaring that states are preempted from exercising authority to designate Lifeline Broadband Providers, we adopt a legislative rule consistent with that outcome. As described above, the ETC designation process is an important tool to protect consumers and prevent waste, fraud, and abuse in the Lifeline program, but should not become a barrier that discourages legitimate carrier participation and inhibits universal access to advanced communications services. Accordingly, for the reasons discussed above, the Commission revises Section 54.201 of its rules to prohibit state commissions from designating Lifeline Broadband Providers.

221. Some commenters have argued that the Commission should not preempt or limit states' roles in ETC designations. To that end, we note that in this Order we do not preempt states' authority to designate ETCs for Lifeline voice service, nor to grant broader ETC designations that are not Lifeline-only and include support from the USF High-Cost Program. (We also note that, to the extent that state commissions have declined to designate carriers as ETCs over concerns about those carriers' 911 services, this Order does not prevent states from inquiring into such issues for carriers offering voice service seeking a non-Lifeline Broadband Provider ETC designation). For those areas in which states have traditionally held a role and which more often involve jurisdictionally intrastate services, our preemption here does not change states' responsibility to designate ETCs. (States will therefore continue to be in a position to evaluate issues like a non-LBP ETC's ability to meet ETC service and facilities requirements. We find that the Commission is capable of determining whether common carriers seeking designation as an LBP will be able to fulfill those requirements, as detailed below. We recognize that Section 254(i) contemplates that "the Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable." 47 U.S.C. 254(i). We do not here preempt any otherwise permissible efforts, consistent with state law, to provide state support). Additionally, although some commenters argue that Section 214(e)

implicitly preserves any state authority relevant to ETC designations, the interrelationship between Section 214(e) and Section 254—*i.e.,* the purpose of a Section 214(e) ETC designation is to implement universal service support mechanisms under Section 254—supports our present preemption of state designations of LBPs as conflicting with the goals of Section 254.

222. Some commenters suggest the FCC is ill-equipped to assume the responsibility of designating broadband providers for the Lifeline program. In response, we expect our reforms to the federal ETC designation process for Lifeline Broadband Providers to prevent petitions from pending longer than is necessary to ensure the continued integrity of the program and protection of consumers. Other commenters argued that the current ETC designation process is not generally lengthy or onerous, and is an important tool in combatting waste, fraud, and abuse in the Lifeline program. We find, however, that a centralized LBP designation process can further streamline the burdens of seeking designation while continuing to prevent waste, fraud, and abuse in the program. Similar to the state measures to prevent fraud that NARUC discusses, Commission rules require annual reporting, annual certifications, and audits for Lifeline providers, the Commission may deny an ETC designation petition if the provider does not meet the relevant requirements, and the Commission's Enforcement Bureau is equipped to investigate and take action against providers that violate the Lifeline program's rules. Some commenters cautioned the Commission to limit the extent to which it streamlines or centralizes the designation process, because of the unique characteristics of the Lifeline market. We note that our preemption and forbearance actions in this Order are tailored to ensure a more competitive, effective program without sacrificing the integrity of the program or the Commission's authority to act in cases of waste, fraud, or abuse.

(ii) Carriers Providing Telephone Exchange Service and Exchange Access

223. Having established our authority to designate where state commissions lack jurisdiction under Section 214(e)(6), we next turn to the question of what types of carriers are eligible for designation by the Commission under 214(e)(6).

224. *Guidance regarding Section 214(e)(6).* Under Section 214(e)(6) of the Act, in order to seek designation as an ETC by the Commission, a provider must be "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission." We explain above why carriers seeking ETC designation specifically as LBPs are "not subject to the jurisdiction of a State commission" within the meaning of that Section. We further clarify that a carrier need only provide some service or services—not necessarily the supported service—that qualify as telephone exchange service and exchange access in order to seek a designation from the Commission under Section 214(e)(6). (We note that the Commission recently declined to address whether broadband Internet access service could constitute telephone exchange service and/or exchange access, nor do we address that issue here).

225. The text of Section 214(e)(6) does not require that the relevant supported service or services for which the carrier is being designated an ETC must constitute telephone exchange service and exchange access. Nor is there any requirement in Section 254(c)(1) that services must be telephone exchange service or exchange access—let alone both—in order to be included in the definition of universal service. Insofar as supported services need not be telephone exchange service and/or exchange access, we decline to interpret Section 214(e)(6) to impose such a requirement on carriers seeking Commission designation under that Section where the text does not itself require it. (Interpreting Section 214(e)(6) to mean that the telephone exchange service and exchange access requirement be met by the supported service would lead to anomalous results. As an illustrative example, if the Commission were to establish a universal service program with telephone toll service as the supported service under Section 254(c), it would be impossible for a provider seeking designation as an ETC to provide telephone exchange service and exchange access as the supported service if that were needed to meet the criteria of Section 214(e)(6). *See* 47 U.S.C. 153(20) (defining "exchange access" and making clear that "telephone exchange service," "exchange access," and "telephone toll service" are distinct categories). If such a carrier also were not subject to the designation authority of a state commission, it would be left with no entity—state commission or this Commission—that could designate it as an ETC, which is at odds with the intent of Section 214(e)(6)). Thus, a carrier providing any service or services that constitute telephone exchange service and exchange access in the area for which it is seeking designation as an ETC may seek designation from the Commission where, as here, such carriers are not subject to state ETC designation jurisdiction within the meaning of Section 214(e)(6).

226. We make clear that in considering whether a carrier is providing telephone exchange service and exchange access for purposes of Section 214(e)(6), we look beyond the corporate entity that itself is seeking designation as a Lifeline Broadband ETC, and also consider affiliates of that entity. This approach is consistent with the Commission's interpretation of Section 214(e)(1), under which the "requirement that an ETC offer the supported services through 'its own facilities or a combination of its own facilities and resale of another carrier's service' would be satisfied when service is provided by any affiliate within the holding company structure." If the duties of an ETC can be satisfied through an affiliate, we find no reason why the Commission, to find Section 214(e)(6) triggered, should have to adopt a stricter interpretation of what entity must provide telephone exchange service and exchange access. This is particularly true because, as explained below, the telephone exchange service and exchange access criteria in Section 214(e)(6) does not bear directly on the carrier's qualifications or responsibilities as an ETC in providing supported services. Further, Section 214(e) was codified as part of Section 214, and prior to the 1996 Act, certain references to "carriers" in Section 214 were interpreted to extend beyond just the relevant corporate entity itself. (Thus, although the 1996 Act codified a definition of "affiliate" in Section 3 of the Act distinct from the definition of "common carrier" there, that does not, by implication, undercut our interpretation of Section 214 because the 1996 "Act and the amendments made by [the 1996] Act shall not be construed to modify, impair, or supersede Federal . . . law unless expressly so provided in such Act or amendments." 1996 Act, 601(c). Indeed, Commission rules implementing Section 214(a) make clear that their use of the term "carrier" includes affiliates within the meaning of Section 3(1) of the Act.). This further bolsters our interpretation of Section 214(e)(6). Thus, we expect that many carriers likely already provide some telephone exchange and exchange access services, whether through the entity providing broadband Internet access service or an affiliate. For example, such services

have included traditional telephone service and commercial mobile radio services (CMRS), which many carriers already provide today. (We recognize that we have not generally classified VoIP as a telecommunications service or information service, but we nonetheless have recognized that providers might elect to offer interconnected VoIP as a telecommunications service. Insofar as a carrier elected to offer VoIP on a common carrier basis, we do not see a reason based on the record here why such service would not also be classified as telephone exchange service and exchange access to the same extent as traditional voice telephone service. We further note that in highlighting the seemingly more straightforward case where VoIP is offered as a telecommunications service, we are not prejudging the question of whether, even if not a telecommunications service, particular VoIP services could constitute telephone exchange service and exchange access, which remains open regarding those scenarios, as well.

227. Furthermore, we interpret the requirement that a carrier seeking designation under Section 214(e)(6) be "providing" telephone exchange service and exchange access in a broad and flexible manner. The Commission in other contexts has interpreted the term "providing" as more inclusive than the offering of the relevant service. Thus, we conclude that it is sufficient for purposes of Section 214(e)(6) that a carrier is making available telephone exchange service and exchange access, whether or not it actually has customers for those services at the time of the ETC designation.

228. In addition, in contrast to Section 214(e)(1)(A), which requires ETCs to provide supported services at least in part over their own facilities, there is no analogous "facilities" requirement in Section 214(e)(6) as to any non-supported services relied on by the carrier for its provision of telephone exchange service and exchange access to trigger that Section. Thus, we interpret Section 214(e)(6) as enabling a carrier to satisfy the "telephone exchange service and exchange access" criteria through pure resale of services that satisfy those definitions.

229. The text of Section 214(e)(6) also does not require the carrier to be providing telephone exchange service and exchange access for any particular period of time before or after the Commission invokes its Section 214(e)(6) designation authority. So we further conclude that the relevant requirement of Section 214(e)(6) can be met by a service or services introduced by the carrier in order to meet the Section 214(e)(6) criteria. We note as well that carriers subject to dominant carrier regulation likely otherwise already are providing services that constitute telephone exchange service and exchange access (and, indeed, likely already are designated as ETCs in relevant respects), so any carriers needing to introduce a new service to satisfy the telephone exchange service and exchange access criteria of Section 214(e)(6) are likely to be nondominant. Thus, they generally are subject to comparatively fewer, if any, *ex ante* constraints on the rates and terms of their offerings.

230. *'Telephone exchange service and exchange access' forbearance.* Even though we anticipate that many providers readily will be able to meet the requirement of "providing telephone exchange service and exchange access" and can seek Commission ETC designation as LBPs under Section 214(e)(6), some providers could be deterred from seeking such designation—and thereby participating in the Lifeline broadband program—because of uncertainty whether they satisfy that criteria. Although we also have authority to designate ETCs under Section 214(e)(3)—which does not require providers to be providing telephone exchange service and exchange access—that authority does not enable us to designate additional LBPs in an area where a carrier already present will provide the supported Lifeline broadband Internet access service. Thus, while an important backstop, that Section 214(e)(3) designation authority does not necessarily enable us to have the type of competitive environment for Lifeline broadband Internet access service that we conclude will most effectively advance our statutory objectives.

231. As a result, pursuant to our authority under Section 10 of the Act, we grant certain forbearance from applying the provision of Section 214(e)(6) requiring carriers to be providing telephone exchange service and exchange access. In particular, we forbear from applying that provision to carriers seeking designation from the Commission as an LBP that do not otherwise provide a service or services already classified by the Commission as telephone exchange service and exchange access. We conclude that doing so will help maximize the potential for the widest possible participation by broadband Internet access service providers in a manner targeted to our policy objectives in this proceeding.

232. In pertinent part, Section 10 directs the Commission to "forbear from applying . . . any provision of [the Act] to a telecommunications carrier or . . . class of telecommunications carriers . . ., in any or some of its or their geographic markets, if the Commission determines that" three criteria are met. Namely, such forbearance is authorized if "the Commission determines that—(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest." The basic forbearance framework is discussed in greater detail below.

233. We find that our forbearance from applying the requirement that carriers be "providing telephone exchange service and exchange access" in the Section 214(e)(6) designation process is a reasonable exercise of our Section 10 authority for several reasons. First, although not unambiguous, the practical impact of that provision in Section 214(e)(6) persuades us that it imposes an obligation on carriers—namely, carriers must provide telephone exchange service and exchange access in order to obtain an ETC designation from the Commission under that Section. The Commission in the past has recognized that Congress intended Section 10 to sweep broadly, (*Cf. Petition For Declaratory Ruling To Clarify 47 U.S.C. 572 In The Context of Transactions Between Competitive Local Exchange Carriers and Cable Operators; Conditional Petition For Forbearance From Section 652 of the Communications Act For Transactions Between Competitive Local Exchange Carriers and Cable Operators,* Memorandum Opinion and Order, 27 FCC Rcd 11532, 11543, para. 22 (2012) (*Section 652 Forbearance Order*) (interpreting the use of "any" in referring to regulations and provisions of the Act that the Commission can forbear from applying to telecommunications carriers or telecommunications services as revealing Congress' broad intent that the forbearance authority). Although the focus in that proceeding was on whether a provision in Title VI could be subject to forbearance under Section 10, the reasoning likewise persuades us more generally to adopt a broad—though not unlimited—view of the Commission's

forbearance under Section 10), and has looked to the real-world consequences of a provision to inform its interpretation and application of Section 10 to that provision. We do the same here, and conclude under Section 10 that the Commission has authority to forbear from applying that provision to carriers that want an LBP designation from the Commission but do not provide a service or services that clearly meet the "telephone exchange service and exchange access" requirement and thus can designate those carriers as LBPs if the remaining Section 214(e)(6) criteria are met. (We explained above why a carrier seeking designation specifically as an LBP is not subject to the jurisdiction of a state commission for purposes of Section 214(e)(6), and beyond the requirement of providing "telephone exchange service and exchange access" from which we forbear here, the carrier still must "meet[] the requirements of" Section 214(e)(1) and be designated as an ETC "for a service area designated by the Commission consistent with applicable Federal and State law," so long as the designation is in the public interest).

234. Second, we conclude that this grant of forbearance readily satisfies the Section 10(a)(1)–(3) criteria. In particular, we find that applying that provision is not necessary to ensure just, reasonable, and not unjustly or unreasonably discriminatory rates and practices under Section 10(a)(1) nor to protect consumers under Section 10(a)(2). The text of Section 214(e)(6) does not illuminate the purpose served by the requirement that carriers seeking ETC designations from the Commission under Section 214(e)(6) be providing telephone exchange service and exchange access. As explained above, because supported services need not be telephone exchange service or exchange access service (let alone both), there is no inherent nexus between a carrier's provision of telephone exchange service and exchange access and its ability to satisfy the requirements for ETC designation under Section 214(e)(1). Nor is there any inherent nexus between a carrier's provision of those services and the public interest analysis under Section 214(e)(6). Thus, nothing in the text of Section 214(e)(6) demonstrates that the "providing telephone exchange service and exchange access" provision is intended to, or is likely to, have any practical effect on carriers' rates and practices for purposes of Section 10(a)(1) or on the protection of consumers under Section 10(a)(2).

235. Nor do we find in the context specifically at issue here that our application of the "providing telephone exchange service and exchange access" provision is necessary under the Section 10(a)(1) and (a)(2) criteria. To the contrary, we conclude that forbearance from applying that provision better advances the objective of just and reasonable rates and practices and protection of consumers, by promoting competition among Lifeline broadband Internet access service providers. If we continued to apply that provision in full, given the concerns expressed about the deterrent effect of the historical ETC designation process in other respects, we expect that carriers otherwise willing to participate in the Lifeline broadband program will be deterred at least incrementally from seeking an LBP designation from the Commission under Section 214(e)(6) if they do not otherwise provide a service or services already clearly classified by the Commission as telephone exchange service and exchange access. (Section 10 permits the Commission to evaluate forbearance assuming *arguendo* that it applies). Providers might be less willing to undertake the effort of seeking an LBP designation in the face of uncertainty regarding whether they meet the threshold obligation of providing telephone exchange service and exchange access.

236. Granting forbearance from the specified provision of Section 214(e)(6) for carriers seeking designation as an LBP that do not otherwise provide a service or services already classified by the Commission as telephone exchange service and exchange access eliminates uncertainty that otherwise risk deterring those providers' participation. This is likely to promote competition for Lifeline broadband Internet access services, and the Commission previously has found that competition helps ensure just and reasonable rates. Moreover, we anticipate that the availability of competing LBPs will better protect consumers receiving the benefits of that increased competition. We further observe that our evaluation of what is necessary to ensure just and reasonable and not unjustly or unreasonably discriminatory rates under Section 10(a)(1) and what is necessary to protect consumers under Section 10(a)(2) is guided by the Commission's responsibilities under Section 254 of the Act and Section 706 of the 1996 Act. As we explain elsewhere, we are modernizing our Lifeline efforts to support broadband Internet access service given its importance to consumers, and ensuring the widest possible participation in the Lifeline broadband program is an important element of those reforms.

237. These same considerations likewise persuade us that forbearance is in the public interest under Section 10(a)(3). Indeed, Section 10(b) directs the Commission, as part of the Section 10(a)(3) analysis, to consider whether forbearance will promote competitive market conditions and, if "forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest." As explained above, we anticipate that the specified forbearance from applying the "providing telephone exchange service and exchange access" provision in Section 214(e)(6) will promote competition among providers of Lifeline broadband Internet access services. Based on that, coupled with the forgoing analysis, we conclude that forbearance is in the public interest under Section 10(a)(3).

c. Lifeline Broadband Provider ETC Designation Process

238. We next turn from the Commission's authority to designate Lifeline Broadband Provider ETCs and take steps to modernize the process by which carriers can obtain such designation. We take additional steps to decrease the burdens of obtaining and maintaining Lifeline Broadband Provider ETC status, while still protecting consumers. We therefore take action to streamline the process by which we will designate Lifeline Broadband Providers to encourage broader participation in the program.

(i) Streamlined Lifeline Broadband Provider Designation Process

239. In this Section, we create a streamlined ETC designation process for carriers seeking designation as Lifeline Broadband Providers, solely for the purpose of receiving Lifeline support for broadband service. We expect that this streamlined process will facilitate market entry and allow new competition to enter the Lifeline market while continuing to protect consumers and the Fund. (Contrary to some commenters' claims, we expect that increasing provider participation will increase competition among providers in the Lifeline program and incentivize providers to offer better quality services).

240. A broadband provider's petition for ETC designation as a Lifeline Broadband Provider for the limited purpose of receiving Lifeline support for BIAS will be subject to expedited review and will be deemed granted within 60 days of the submission of a completed filing provided that the

provider meets certain criteria demonstrating that it is financially stable and experienced in providing broadband services, unless the Commission notifies the applicant that the grant will not be automatically effective. First, as of the date of the filing, the carrier must serve at least 1,000 non-Lifeline customers with voice telephone and/or BIAS service. Second, the carrier must have offered broadband services to the public for at least the 2 years preceding the filing, without interruption. For purposes of this rule, emergency service outages do not constitute an "interruption" because the purpose of this rule is to gauge whether a provider has maintained a substantial presence in the broadband services market. Service quality concerns, if any, will be duly considered by the Commission in evaluating the provider's petition but do not determine whether the provider qualifies the above-described streamlined treatment. We delegate to the Bureau the responsibility for implementing this process and the authority to clarify how carriers may establish that they meet the criteria set out in this framework.

241. Additionally, as part of our efforts to encourage broadband service on Tribal lands, we will apply the above-described expedited review process to petitions for designation as a Lifeline Broadband Provider submitted by Tribally-owned and -controlled facilities-based providers that provide service on Tribal lands, regardless of whether they meet the above-discussed prior service or existing customer criteria. To qualify as a Tribally-owned and -controlled, facilities-based provider, the provider must be greater than 50 percent owned and actually controlled by one or more federally-recognized Tribal Nation(s) or Tribal consortia.

242. Once a provider has obtained designation as an LBP, that provider may expand their LBP service area designation by submitting a letter to the Commission identifying the service areas in which the LBP plans to offer Lifeline-supported service and a certification that there has been no material change to the information submitted in the petition for which the LBP received designation as an LBP. Such a request shall be deemed granted five business days after it is submitted to the Commission, unless the Bureau notifies the applicant that the grant will not be automatically effective. We therefore amend Section 54.202 of the Commission's rules to reflect these changes. We expect that this process will empower LBPs to rapidly expand Lifeline-supported broadband service offerings to new areas, while retaining the Commission's ability to protect consumers and the Fund.

243. We want to facilitate a robust competitive marketplace for Lifeline customers and therefore encourage providers, including nontraditional providers, that do not meet the streamlined criteria to submit a request to be an LBP. All such petitions will be reviewed thoroughly and not automatically deemed granted after a set time, but the Bureau shall act on such petitions within six months of the submission of a completed filing. Accordingly, we update Section 54.202 of the Commission's rules to reflect these targeted changes to the Commission's designation process for the purpose of designating Lifeline Broadband Provider ETCs. (Providers seeking designation as an LBP that are not facilities-based are not required to obtain Commission approval of a compliance plan prior to receiving designation as an LBP. We find that the designation process for LBPs is distinct from the process set out for Lifeline-only ETCs in the *2012 Lifeline Reform Order,* and LBP designation criteria are sufficient to prevent waste, fraud, and abuse in the program, so a separate obligation to obtain approval for a compliance plan is not necessary). Our revisions to Section 54.202 of the Commission's rules, as discussed in this Section, will become effective upon announcement of OMB approval under the PRA, at which point providers may begin submitting petitions for ETC designation as a Lifeline Broadband Provider.

244. A provider seeking designation as an LBP should submit the following information in its filing. First, the provider must certify that it will comply with the service requirements applicable to the support that it receives, including any applicable minimum service standards. Second, the provider must demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. Third, the provider must demonstrate that it will satisfy applicable consumer protection and service quality standards. (A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement). Fourth, the carrier must demonstrate that it is financially and technically capable of providing the Lifeline service, which could be satisfied in a number of ways, including showing compliance with subpart E of part 54 of the Commission's rules.

245. Section 54.202(a) of the Commission's rules currently requires common carriers seeking designation as an ETC solely for the purpose of receiving Lifeline support to "submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers." We now revise this rule to also require such ETCs, including LBPs, to submit information describing the terms and conditions of any broadband Internet access service plans offered to Lifeline subscribers at the time of designation. Such information should include details regarding the speeds offered, data usage allotments, additional charges for particular uses, if any, and rates for each such plan. While this information should be filed at the time of LBP designation, providers need not refile or notify the Commission of changes to their plans so long as they certify compliance with the applicable minimum standards. Providing this snapshot of Lifeline offerings will allow the Commission to better understand and evaluate whether prospective ETCs, including prospective LBPs, are seeking to launch service offerings that comply with the Lifeline program's rules.

246. We find that this process for prospective LBPs protects the integrity of the Lifeline program and guards against waste, fraud, and abuse, while facilitating market entry and encouraging competition. All LBPs, regardless of whether they qualify for streamlined treatment, must meet the requirements for designation as a Lifeline-only ETC established in Section 214(e) of the Act and §§ 54.201 and 54.202 of the Commission's rules. (We note that the requirement to submit a five-year plan describing proposed improvements or upgrades to the provider's network does not apply to providers seeking designation solely for the purpose of receiving support through the Lifeline program, including LBPs). The Commission will examine all petitions for designation as an LBP to ensure that petitioning carriers meet the requirements in the Act and the Commission's implementing rules. The Commission will use its authority to deny petitions, remove petitions from streamlined treatment, or both, if the circumstances so require. Additionally, LBPs must comply with the Lifeline program rules and will be subject to auditing and enforcement in accordance with the Commission's rules.

247. We are also mindful of the many existing Lifeline providers designated by states and the FCC that intend to offer standalone broadband to Lifeline consumers. We note that, as set out below, Lifeline-only ETCs may receive Lifeline support for BIAS provided to eligible low-income consumers but existing ETCs also retain the option to avail themselves of forbearance from the obligation to offer broadband. Lifeline-only ETCs will thus be able to receive support for BIAS through Lifeline without re-submitting a petition for ETC designation as a Lifeline Broadband Provider.

d. Preserving a State Role in Lifeline

248. Nothing in this Order preempts states' ability to develop and manage their own state Lifeline programs. Nor does the creation of the LBP designation disturb states' current processes for designating non-LBP ETCs, where they retain jurisdiction. In these ways, states will continue to play an important role in the administration of state Lifeline programs and traditional non-LBP ETC designations, where state law grants them authority to do so.

249. We recognize that a number of states have put in place state Lifeline programs that provide state-funded subsidies to low-income consumers for communications services. We applaud these state programs for devoting resources designed to help close the affordability gap for communications services. Nothing in this Order preempts states' ability to create or administer such state-based Lifeline programs that include state funding for Lifeline support to support voice service, BIAS, or both. States that do maintain state Lifeline programs may therefore enact their own rules for the administration of those programs. For example, a state may deem consumers eligible to participate in that state's Lifeline program based on the consumer's participation in another state-based program, even if that eligibility program does not make the consumer eligible for federal Lifeline support.

250. Additionally, we make clear that states retain the ability to designate Lifeline-only ETCs and ETCs that are not Lifeline-only, to the extent that state law grants them authority to do so. For the reasons discussed above, our preemption in this Order with regard to LBPs does not impact states' authority to designate other categories of ETCs, even if those ETCs receive designations from states that are broad enough to encompass Lifeline support for BIAS. As a result, to the extent a provider wants to receive state Lifeline funds in addition to federal Lifeline support, the provider must seek approval and (to the extent required by a state for receipt of state funding) ETC designation from the relevant state commission and comply with any applicable state laws. To the extent a provider only seeks the federal LBP, however, providers are not required to seek approval or designation from the states.

251. We anticipate that preserving the roles that states have traditionally played in Lifeline will benefit low-income consumers by enabling states to offer their own support for services provided to low-income households and encouraging competition from non-LBP ETCs that have traditionally been designated by states.

2. Lifeline Obligations for Eligible Telecommunications Carriers

252. In this Section, we turn to the issue of what ETC service obligations are appropriate and best suited for a successful modernized Lifeline program. We consider the substantive obligations placed on ETCs through the Act and the Commission's rules, and streamline certain of those obligations through targeted forbearance and other regulatory tools to encourage broader participation and more robust competition among providers in the Lifeline market. We find that such actions will further modernize the Lifeline program to encourage market entry by providers offering BIAS while still protecting consumers and ensuring the services Lifeline subscribers receive are of high quality.

253. In the *2015 Lifeline FNPRM,* we sought comment on ways to increase competition and encourage market entry in the Lifeline program. Within that inquiry, we sought comment on whether certain requirements related to ETC designation were "overly burdensome" and could be simplified or eliminated while protecting consumers and the Fund. We also inquired about permitting ETCs to opt-out of providing Lifeline supported service in certain circumstances, and we sought comment on the many other requirements new Lifeline providers must meet to participate in the program. We asked whether there are specific state or federal regulatory barriers that make it difficult for carriers to enter or remain in the Lifeline program, and how the Commission can address them.

a. Forbearance Standard

254. Section 10 of the Act provides that the Commission "shall" forbear from applying any regulation or provision of the Communications Act to telecommunications carriers or telecommunications services if the Commission determines that: (1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.

255. In evaluating whether a rule is "necessary" under the first two prongs of the three-part Section 10 forbearance test, the Commission considers whether a current need exists for a rule. In particular, the current need analysis assists in interpreting the word "necessary" in Sections 10(a)(1) and 10(a)(2). For those portions of our forbearance analysis that require us to assess whether a rule is necessary, the D.C. Circuit concluded that "it is reasonable to construe 'necessary' as referring to the existence of a strong connection between what the agency has done by way of regulation and what the agency permissibly sought to achieve with the disputed regulation." Section 10(a)(3) requires the Commission to consider whether forbearance is consistent with the public interest, an inquiry that also may include other considerations. Forbearance is warranted under Section 10(a) only if all three of the forbearance criteria are satisfied. The Commission has found that nothing in the language of Section 10 precludes the Commission from proceeding on a basis other than the competitiveness of a market where warranted.

256. Also relevant to our analysis, Section 706 of the 1996 Act "explicitly directs the FCC to 'utiliz[e]' forbearance to 'encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.'" In its most recent *Broadband Progress Report,* the Commission found "that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion." This finding, in turn, triggers a duty under Section 706 for the Commission to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." Within the statutory framework that Congress established, the Commission "possesses significant, albeit not unfettered, authority and

discretion to settle on the best regulatory or deregulatory approach to broadband."

257. Section 10(b) directs the Commission to consider whether forbearance will promote competitive market conditions as part of its public interest analysis under Section 10(a)(3). However, we recognize that Section 10 does not compel us to treat a competitive analysis as determinative when we reasonably find, based on the record, that other considerations are more relevant to our statutory analysis. We make our decision as to each category of ETC requirements as they relate to the provision of Lifeline-supported services based on the information we deem most relevant to the analysis prescribed from Section 10(a).

b. Forbearance Regarding the Lifeline Broadband Service Obligation

258. In streamlining Lifeline ETC obligations for participating carriers, we first turn to the broadband service obligations of various categories of ETCs. In this Section we use targeted forbearance from certain ETC obligations to encourage market entry and competition while continuing to protect consumers and the Fund.

259. For Lifeline-only ETCs, we establish that such ETCs are eligible to receive Lifeline support for broadband service but may choose to only offer a supported voice service instead. For other ETCs that are not Lifeline-only, we establish that such ETCs are also eligible to receive Lifeline support for broadband service and forbear from requiring such ETCs to offer Lifeline-supported broadband service, except in areas where the ETC commercially offers broadband pursuant to its high-cost obligations. For Lifeline Broadband Providers, we establish a streamlined relinquishment process that gives providers greater certainty while retaining the Commission's ability to protect consumers.

(i) Lifeline-Only ETCs

260. For Lifeline-only ETCs, we interpret such carriers' ETC designations as broad enough to make them eligible for Lifeline broadband support. Lifeline-only ETCs may therefore receive support for Lifeline-discounted BIAS provided to eligible low-income subscribers within their designated service areas without receiving federal designation as Lifeline Broadband Providers. However, we forbear from Lifeline-only ETCs' obligations to offer BIAS to permit such ETCs to solely offer voice if they so choose. (We note that when the Lifeline discount no longer applies to voice-only offerings, a Lifeline-only ETC that does not choose to offer Lifeline-discounted fixed voice service will have the option of seeking relinquishment of its statutory obligation to offer supported voice telephony service under Section 214(e)(4) of the Act and continuing to receive Lifeline support for its BIAS offerings. Alternatively, a Lifeline-only ETC may obtain an ETC designation as a Lifeline Broadband Provider, seek relinquishment of its existing Lifeline-only ETC designation, and operate solely as a federally-designated LBP). To the extent that Lifeline-only ETCs elect to also offer BIAS to eligible subscribers, they may receive reimbursement for such service through the Lifeline program.

261. *Eligibility to receive Lifeline broadband support.* We find that Lifeline-only ETC designations, such as exist today, are broad enough to make Lifeline-only ETCs eligible to receive reimbursement through the Lifeline program for offering discounted BIAS to eligible low-income subscribers. This is consistent with past Commission precedent. For example, when the Commission simplified the core functionalities of the supported services for universal service support mechanisms in the overarching concept of "voice telephony service," it clarified that such a change was intended to promote technological neutrality and that many of the previously-enumerated supported services would still be offered as a function of voice telephony. Accordingly, providers that obtained ETC designation for the limited purpose of receiving Lifeline support, even after the *USF/ICC Transformation Order,* received designation for a number of different functionalities encompassed within "voice telephony." Now, as we add BIAS as a supported service in this Order, we find that Lifeline-only ETCs' designations, which were broad enough to encompass the nine supported services before the *USF/ICC Transformation Order* and broad enough to encompass multiple functionalities within the concept of "voice telephony," are similarly broad enough to include the addition of a supported service for purposes of offering Lifeline-supported BIAS.

262. *Obligation to offer all supported services.* Based on our consideration of the relevant statutory framework and the record before us, we now conclude that it is in the public interest to forbear, pursuant to Section 10 of the Act, from requiring existing Lifeline-only ETCs to offer Lifeline-supported broadband Internet access service. As a result of this forbearance, existing Lifeline-only ETCs will be able to continue to offer voice service, consistent with the Lifeline program's rules. At the same time, Lifeline-only ETCs remain eligible for Lifeline broadband support to the extent that they elect to provide that service. ETCs that seek to avail themselves of this forbearance and therefore offer only voice service must file a notification with the Commission that they are availing themselves of this relief.

263. To facilitate program administration, we require any ETC that plans to not offer a Lifeline-discounted BIAS offering under the reforms in this Order to notify the Commission that it is availing itself of the forbearance relief granted in this Section. Such notification must be filed by the later of 60 days after announcement of OMB approval of this Order under the PRA or 30 days after receiving designation as a Lifeline-only ETC. This notification requirement, as a condition to our grant of forbearance, is a critical element of our actions today. To ensure that the Commission is well informed about the state of the marketplace of Lifeline providers offering voice-only versus Lifeline BIAS, we must impose this notification requirement prior to ETCs availing themselves of this forbearance.

264. We find that enforcement of this requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with this class of telecommunications carrier and telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory. We also find that enforcement of this requirement is not necessary for the protection of consumers and that the above-described forbearance is consistent with the public interest.

265. We find that it is not necessary to impose an obligation to offer Lifeline-supported BIAS within the Lifeline marketplace for Lifeline-only ETCs and that they should be permitted, but not required, to offer Lifeline-discounted BIAS when such ETCs give notice to the Commission of their intent to limit offerings to voice service. This forbearance will not alter the Commission's authority over Lifeline-only ETCs' charges, practices, and classifications in providing Lifeline-supported voice service, nor will it allow such ETCs to unjustly or unreasonably discriminate in their voice offerings. Lifeline-only ETCs will continue to comply with all existing regulations to protect consumers and will, in many instances, face more competition within the marketplace from other Lifeline providers offering

either or both voice and Lifeline-supported BIAS service offerings. Existing regulations and competition will also help keep Lifeline-only ETCs' rates and other terms and conditions of service just and reasonable and not unjustly or unreasonably discriminatory. As a result, the obligation to offer BIAS for Lifeline-only ETCs is not necessary to protect consumers. The Commission has recognized that granting forbearance relief in light of other still-applicable regulatory requirements is reasonable and appropriate while both retaining necessary safeguards and reducing costs.

266. Preserving this option for Lifeline-only ETCs is also consistent with concerns raised by commenters. In response to the Commission's inquiries about including broadband as a supported service in the Lifeline program and setting minimum service levels for voice and broadband services, several providers responded that the Commission should preserve providers' ability to offer a voice-only service option. For example, Sprint argued that "the provision of Lifeline broadband service should be voluntary, not mandatory," noting that some existing Lifeline carriers may not be able to offer broadband service because of the nature of their existing resale agreements with their underlying providers.

267. We also agree with commenters that permitting Lifeline-only ETCs offering voice service to participate in Lifeline even if they do not offer BIAS will give eligible low-income customers more Lifeline-discounted options in the market. (This decision is consistent with the Commission's decision to transition Lifeline funding away from voice service as a standalone option. While Lifeline-only ETCs are able to receive reimbursement for voice service they may choose to focus on that service, but when voice service as a standalone option is no longer eligible for reimbursement through the Lifeline program those ETCs must choose another supported service to offer or seek to relinquish their ETC status under Section 214(e)(4)). We expect that permitting Lifeline-only ETCs offering voice service to participate in Lifeline even if they do not offer BIAS will give eligible low-income customers more Lifeline-discounted options in the market. Accordingly, this forbearance, while not preventing existing or future Lifeline-only ETCs from offering discounted BIAS, will permit those ETCs to continue to offer a discounted standalone voice option if they so choose, which will preserve additional options for consumers in addition to new BIAS options that we expect will enter the Lifeline market. This increase in competition will, in turn, lead to higher quality service offerings at lower prices for eligible low-income subscribers.

268. We find this forbearance is not necessary for the protection of consumers so long as Lifeline-only ETCs are required to notify the Commission of their intent to avail themselves of this forbearance. To ensure that the Commission stays informed of the Lifeline marketplace and knows the number of providers offering voice versus Lifeline-supported BIAS, it is critical that the Commission is able to stay informed of the Lifeline market and consumer options. This notification requirement will give the Commission critical information in understanding and evaluating the Lifeline market to determine how well its regulatory structure provides incentives for participation in the Lifeline program.

269. Forbearance from this requirement is consistent with the public interest. Forbearance from the requirement that a Lifeline-only ETC offer Lifeline-supported BIAS allows service providers to continue serving the existing voice market while permitting those ETCs (to the extent they have not elected to avail themselves of forbearance) to also easily introduce new Lifeline-discounted BIAS offerings. (As discussed above, this forbearance also provides ETCs with greater options to continue serving eligible low-income consumers during the transition to the point where voice will no longer be supported by the Lifeline program). These additional options will promote competitive market conditions by providing low-income consumers with more Lifeline-discounted offerings and a diversity of providers to serve them. With more providers in the Lifeline marketplace, this will open the Lifeline program to innovative new service offerings that will better meet the needs of eligible subscribers and further modernize the program by encouraging BIAS offerings for Lifeline subscribers.

270. As an additional benefit, this forbearance will serve the Lifeline program's purpose of ensuring affordable access to high-quality telecommunications services to eligible low-income households. As detailed above, we recognize that many consumers rely on voice service as their primary form of communication. This forbearance will allow service providers that do not intend to offer BIAS, to continue to serving consumers this supported service. As noted by commenters, certain providers might be required to exit the market given their limitations in offering BIAS. Those providers that avail themselves of this forbearance will have the option of continuing to offer voice service.

(ii) ETCs That Are Not Lifeline-Only

271. For ETCs offering voice service that are not Lifeline-only, we interpret such carriers' ETC designations as broad enough to make them eligible for Lifeline broadband support. Such ETCs may therefore receive support for Lifeline-discounted BIAS provided to eligible low-income subscribers within their designated service areas. However, we forbear from these ETCs' obligation to offer Lifeline BIAS to permit such ETCs to solely offer voice in the Lifeline program, provided such ETCs file a notification with the Commission that they are availing themselves of this relief. This forbearance, however, does not apply to areas where ETCs commercially offer broadband that meets the Lifeline minimum service standards pursuant to their high-cost USF obligations, in which case they remain subject to the Lifeline broadband service obligation. (As detailed above, we also require carriers receiving high-cost support to provide Lifeline-supported broadband services in areas where they receive high-cost support and are already offering broadband services at the minimum service levels). To the extent that these ETCs elect to also offer BIAS to eligible subscribers even when not required, they may receive reimbursement for such service through the Lifeline program.

272. *Eligibility to receive Lifeline broadband support.* We find that the ETC designations of ETCs that are not Lifeline-only are broad enough to make those ETCs eligible to receive reimbursement through the Lifeline program for offering discounted BIAS to eligible low-income subscribers. As discussed above, this is consistent with past Commission precedent of including multiple functionalities even as it updated the definition of services supported by universal service support mechanisms.

273. *Obligation to offer all supported services.* Based on our consideration of the relevant statutory framework and the record before us, we now conclude that it is in the public interest to forbear, pursuant to Section 10 of the Act, from requiring existing ETCs that are not Lifeline-only to offer Lifeline-supported BIAS in areas where they do not commercially offer such service or do not receive high-cost support. Accordingly, ETCs that are not Lifeline-only will be able to continue to offer voice-only service, consistent with the

Lifeline program's rules. At the same time, such ETCs remain eligible for Lifeline broadband support to the extent that they elect to provide that service. This forbearance does not extend to areas where existing ETCs commercially offer BIAS pursuant to their high-cost USF obligations and such service meets the Lifeline program's minimum service requirements, in which case ETCs remain subject to the Lifeline broadband service obligation. Those ETCs receiving frozen high-cost support—whether incumbent providers or competitive ETCs—are not required to offer Lifeline-supported broadband services in their designated service areas. Given that the frozen support program is an interim program that is due to be eliminated, we agree with commenters that frozen support recipients should not be required to implement new processes to offer BIAS as a supported service.

274. In the areas subject to forbearance, existing ETCs remain eligible for Lifeline broadband support to the extent that they elect to provide that service. As a result of this forbearance, ETCs that are not Lifeline-only will only be required to offer Lifeline BIAS in those areas where the ETC commercially offers qualifying BIAS pursuant to the ETC's obligations under the high-cost rules. ETCs that seek to avail themselves of this forbearance must file a notification with the FCC that they are availing themselves of this relief and to identify those areas by Census block where they intend to avail themselves of this forbearance relief.

275. To facilitate program administration, we require any ETC that plans to not offer a Lifeline-discounted BIAS offering under the reforms in this Order to notify the Commission that it is availing itself of the forbearance relief granted in this Section and to identify those areas by Census block where they intend to avail themselves of this forbearance relief. Such notification must be filed by the later of 60 days after announcement of OMB approval of this Order under the PRA or 30 days after receiving designation as an ETC. This notification requirement, as a condition to our grant of forbearance, is a critical element of this grant of forbearance. To ensure that the Commission is well informed about the state of the marketplace of Lifeline providers offering voice-only service versus Lifeline BIAS, we must impose this notification requirement prior to ETCs availing themselves of this forbearance.

276. We find that enforcement of this requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with this class of telecommunications carrier and telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory. We also find that enforcement of this requirement is not necessary for the protection of consumers and that the above-described forbearance is consistent with the public interest.

277. With the exception discussed below, we find that this forbearance meets the criteria set out in Section 10(a) of the Act for much the same reasons that led us to grant forbearance to Lifeline-only ETCs in the prior Section. This forbearance will not alter the Commission's authority over the charges and practices of ETCs, nor will it allow ETCs to unjustly or unreasonably discriminate in offering their Lifeline-supported services. The Commission has recognized that granting forbearance relief in light of other still-applicable regulatory requirements is reasonable and appropriate while both retaining necessary safeguards and reducing costs.

278. Forbearance from this requirement is consistent with the public interest. We find that such forbearance will create a level playing field as between Lifeline-only ETCs and ETCs that are not Lifeline-only where the latter are not commercially offering qualifying broadband service pursuant to their high-cost obligations. Similar to our analysis with Lifeline-only ETCs, this forbearance serves the public interest because it permits ETCs to focus their Lifeline offerings on the voice market where they are not able to offer qualifying Lifeline-discounted BIAS, while still permitting such ETCs to easily introduce Lifeline-discounted BIAS offerings if they so choose. We find that this forbearance will give eligible low-income consumers more Lifeline-discounted choices in the market, and will lead to higher quality service offerings at lower prices.

279. *Areas where ETCs commercially offers BIAS pursuant to high-cost obligations.* As discussed above, after the enactment of the 1996 Act, incumbent LECs' designated service areas as ETCs were defined as wherever they offered voice telephony service in a state, including Census blocks where the incumbent LECs do not currently receive high-cost support or are not obligated to offer broadband at 10/1 Mbps or greater speeds pursuant to Commission rules. Some ETCs are concerned that program changes would require them to provide Lifeline-supported broadband in Census blocks where the provider is not obligated to offer broadband services or does not receive high-cost support. To address these concerns, we first clarify, here and in Section III.A, Modernizing Lifeline to Support Broadband, that ETCs receiving high-cost support are not required to offer Lifeline-supported BIAS in Census blocks where the ETC does not commercially offer a broadband service that meets the minimum service standards of the Lifeline program pursuant to its high-cost obligations. Accordingly, we retain the obligation to offer the Lifeline discount on all qualifying services in areas where an ETC receives high-cost support, has deployed a network capable of delivering service that meets the Lifeline program's minimum service standards, and commercially offers such service pursuant to its high-cost obligations. (This obligation does not apply to ETCs receiving frozen high-cost support).

280. In areas where the provider receives high-cost support but has not yet deployed a broadband network consistent with the provider's high-cost service obligations, the obligation to provide Lifeline-supported BIAS begins only when the provider has deployed a high-cost supported broadband network to that area and makes its BIAS commercially available. (For example, we recognize that many high-cost recipients receiving CAF Phase II support have not deployed broadband capable networks in all of the Census blocks where they receive high-cost support, but are required to do so pursuant to deadlines set forth in the Commission's high-cost rules). For example, a rate-of-return carrier must provide Lifeline-supported BIAS if it deploys a network providing a minimum of 10/1 Mbps upon reasonable request from a qualified low-income consumer in satisfaction of its high-cost obligations. (In the event speeds of 10/1 Mbps are not available, such providers are required to offer Lifeline-supported BIAS if speeds at 4 Mbps/1 or above are commercially available). Or, as another example, a price cap carrier that accepted Connect America Phase II model-based support, must provide Lifeline-supported BIAS in an area where that price cap carrier has already deployed broadband facilities capable of providing the minimum service levels set forth above and is commercially offering service. However, an authorized rural broadband experiment bidder is not required to provide Lifeline-supported BIAS until it has deployed broadband-capable facilities to the location of a qualified

low-income consumer in satisfaction of its high-cost deployment obligations. We adopt these requirements to ensure that all consumers living in high-cost areas, including low-income consumers, have the meaningful option of subscribing to BIAS once it is commercially available.

(iii) New Lifeline Broadband Providers

281. For providers that receive ETC designation as Lifeline Broadband Providers, such a designation makes them eligible for Lifeline broadband support, with the accompanying obligation to offer Lifeline broadband service. In this Section, we establish a streamlined LBP relinquishment process to further reduce the perceived risk of entering the Lifeline broadband market.

282. In implementing the ETC relinquishment process for LBPs, we establish the streamlined relinquishment procedures described below, except for relinquishments by LBPs also receiving high-cost universal service support. (We note that this relinquishment process will only apply to LBPs designated under Section 214(e)(6) of the Act). We find that a streamlined relinquishment process will encourage new providers to enter the Lifeline market by giving them clarity as to how they may responsibly exit that market, while fulfilling the Commission's responsibility to protect consumers, ensure that subscribers will continue to be served, and ensure that subscribers are given sufficient notice. We therefore revise Section 54.205 of the Commission's rules to create a streamlined relinquishment process for LBPs. Under this process, an LBP's advance notice of its intent to relinquish its designation pursuant to Section 214(e)(4) shall be deemed granted by the Commission 60 days after the notice is filed, unless the Bureau notifies the LBP that the relinquishment will not be automatically effective. Consistent with Congressional directives, the Commission will issue such a notification that the relinquishment will not be automatically effective if an automatic grant would violate any of the criteria listed in Section 214(e)(4).

283. We expect that a streamlined ETC relinquishment process for LBPs will reduce the perceived risk for broadband providers to enter the Lifeline market. This will encourage providers to offer Lifeline-supported broadband services and increase competition, which will, in turn, lead to greater choices among affordable, higher quality service offerings for eligible low-income subscribers. Pursuant to the new LBP relinquishment procedures, the Commission will notify the relevant LBP if its relinquishment will not be automatically effective in cases where, for example, customers may need more time to transition to a new carrier. As a result, the Commission will still have the authority and responsibility to at least temporarily prevent a relinquishment that would harm consumers until an appropriate solution can be found.

284. We find that a streamlined relinquishment process for LBPs will serve the Lifeline program's purpose of ensuring affordable access to high-quality advanced telecommunications services to eligible low-income households. By giving providers greater flexibility and encouraging investment in the Lifeline market, this streamlined process will open the Lifeline program to innovative new service offerings that will better meet the needs of eligible subscribers and further modernize the program by encouraging BIAS offerings for Lifeline subscribers.

c. Forbearance Regarding the Lifeline Voice Service Obligation

285. Having described the tailored broadband service obligations of various categories of ETCs in the previous Section, we next turn to the Lifeline voice service obligations. As to Lifeline-only ETCs, which historically participated specifically in order to provide Lifeline voice service, we do not alter the preexisting voice service obligation. Regarding existing ETCs that are not Lifeline-only, we deny the broadest requests for unconditional forbearance from the Lifeline voice obligation, but find it justified to grant certain conditional forbearance designed to promote broadband policy goals while protecting Lifeline consumers. We further make clear that entities newly designated as ETCs specifically for Lifeline broadband purposes do not have any Lifeline voice obligation under our interpretation of Section 214(e).

(i) Lifeline-Only ETCs

286. We decline to forbear from existing Lifeline-only ETCs' obligations to offer Lifeline-discounted voice service. Lifeline-only ETCs were designated as ETCs for the specific purpose of providing Lifeline voice service. (At the time existing Lifeline-only ETCs were designated, the only service for which they could receive support was voice service supported by the Lifeline mechanism, including the multiple functionalities that are encompassed within voice telephony service). The proposals for forbearance or other relief from Lifeline voice service obligations also have focused on ETCs that are not Lifeline-only, as we discuss below. We thus find no basis in the record here to conclude that existing Lifeline-only ETCs are similarly situated to the ETCs for which we grant some relief from otherwise-applicable Lifeline voice service obligations in the Section below. As a result, existing Lifeline-only ETCs remain subject to Lifeline voice service obligations unless or until they relinquish their designations or otherwise seek—and justify—relief. Of course, consistent with the Lifeline reforms adopted in this Order, Lifeline-only ETCs not only can receive support for providing voice telephony to qualifying low-income subscribers, but alternatively when they provide Lifeline broadband Internet access service (with or without voice). Given our phase-out of Lifeline support for voice-only service for many providers, we recognize that such ETCs might well take steps in response, such as relinquishing their Lifeline voice ETC designations, thereby eliminating any obligation under Section 214(e)(1) and our implementing rules to provide the supported Lifeline voice telephony service. Consistent with our interpretation and implementation of Sections 214(e) and 254, however, we emphasize that ETCs have the option to seek relinquishment of only their Lifeline voice ETC designation, leaving them still eligible to receive Lifeline broadband support.

(ii) ETCs That Are Not Lifeline-Only

287. *Conditional forbearance for existing ETCs' Lifeline voice obligation.* On several occasions, including in the *2015 Lifeline FNPRM,* the Commission has sought comment on the question of whether, or under what circumstances, carriers that currently are designated as ETCs for purposes of receiving both high-cost and Lifeline voice support should get relief from Lifeline voice service obligations (referred to here for convenience as High-Cost/Lifeline ETCs). Primarily, such requests for relief have come from, or focused most extensively on, incumbent LECs that obtained ETC designations following the 1996 Act. (Existing High-Cost/Lifeline ETCs can include carriers other than price cap carriers or incumbent LECs, and we do not find evidence or arguments in the record here warranting a materially different analysis in the context of competitive ETCs that are not Lifeline-only ETCs. Consequently, our analysis below does not differentiate among such High-Cost/Lifeline ETCs). In the *2015 USTelecom Forbearance Order,* the Commission declined to grant forbearance from such obligations on the record there, observing among

other things that the record in this Lifeline rulemaking proceeding might persuade the Commission to reach a different result. We likewise decline to grant the broadest forbearance from Lifeline voice obligations under the record here. In connection with the reforms otherwise being adopted, however, we are persuaded to grant forbearance from Lifeline voice service obligations targeted to areas where certain conditions are met.

288. Although the Commission stated in the *2015 USTelecom Forbearance Order* that the record in this Lifeline rulemaking proceeding might persuade the Commission to reach a different result regarding forbearance from Lifeline voice service obligations, the record here does not convince us to grant the broadest requests for forbearance. In particular, we find persuasive here the Commission's reasoning in the *2015 USTelecom Forbearance Order* regarding the possibility of broadly forbearing from Lifeline voice service obligations for High-Cost/Lifeline ETCs. (The *2015 USTelecom Forbearance Order* also involved requests for other forbearance from ETC designations and obligations beyond the scope of this Lifeline rulemaking proceeding. We thus focus here on the analysis in the *2015 USTelecom Forbearance Order* insofar as it was relevant to the evaluation of possible forbearance from ETCs' Lifeline service obligations).

289. With respect to the Section 10(a)(2) consumer protection inquiry, the Commission, informed by the consumer protection goals in Section 214(e)(4), found insufficient evidence to persuade it that the Lifeline voice service obligation for High-Cost/Lifeline ETCs was unnecessary to protect consumers. As a threshold matter, the Commission was not persuaded that the geographic areas subject to potential forbearance were subject to the sort of marketplace conditions that would give it comfort with a less detailed analysis of the sort previously used when granting certain relief from high-cost service obligations in the *Dec. 2014 CAF Order.* Nor was the Commission persuaded that other consumer protection interests, such as broadband policy interests, "would be controlling or even instructive in the Commission's analysis." As a result, the Commission concluded that it needed to consider detailed evidence of the ability of consumers to be served in the absence of the relevant ETC service obligation—evidence that it found lacking on the record there.

290. In this proceeding, we likewise find it necessary to evaluate forbearance based on detailed marketplace evidence as to forbearance from Lifeline voice service obligations other than the conditional forbearance we grant below. For one, we cannot take sufficient comfort in the marketplace conditions to justify evaluating unconditional forbearance from Lifeline voice service obligations via the less detailed analysis used in the *Dec. 2014 CAF Order.* As to the geographic areas not within the scope of the high-cost voice forbearance in the *Dec. 2014 CAF Order,* we reach that conclusion, like we did in the *2015 USTelecom Forbearance Order,* because these areas are not low-cost or served by an unsubsidized provider. As to the geographic areas that were subject to high-cost voice forbearance in the *Dec. 2014 CAF Order,* we conclude that a different approach is warranted for low-income consumers. As the Commission explained in the *2015 USTelecom Forbearance Order,* "[l]ow-income consumers may lack the resources to take advantage of alternative service options from non-Lifeline providers," and thus "we find it appropriate to evaluate marketplace conditions for low-income customers in a more focused manner, even in areas where we might naturally expect at least some level of competitive provision of service generally."

291. Likewise, outside the context of the conditional forbearance we grant below, we do not find other consumer protection interests sufficient to counsel in favor of a less detailed marketplace analysis in granting forbearance. Absent a condition like that imposed on the forbearance we adopt below, we do not find a basis to expect that forbearance from Lifeline voice service obligations necessarily will advance our broadband policy goals. We thus reject speculative assertions that unconditioned forbearance will promote broadband policy sufficient to warrant forbearance in-and-of themselves or justify a less detailed marketplace analysis to evaluate forbearance.

292. Having concluded that a detailed evaluation of the sort described in the *2015 USTelecom Forbearance Order* is needed to evaluate unconditional forbearance from the Lifeline voice obligation for High-Cost/Lifeline ETCs, we likewise find the record insufficient to justify forbearance on that basis. (Given our identified need for detailed marketplace information to evaluate possible broad, unconditional forbearance from the Lifeline voice service obligation, we likewise reject high-level claims that Lifeline reforms are likely to increase competition and obviate the need for Lifeline voice service obligations. Although we design our reforms in a manner intended to advance that objective, particularly in the case of the Lifeline broadband program, that does not constitute the sort of detailed market place evidence we have concluded is needed). In particular, the Commission found the evidence insufficient to grant forbearance from Lifeline voice obligations (among other ETC obligations) in the *2015 USTelecom Forbearance Order.* Although the Commission observed that additional evidence adduced in the record here might warrant a different conclusion, the record does not reveal any additional marketplace evidence that would warrant a grant of forbearance under such a detailed marketplace analysis. Nor does the record include evidence regarding particular bright-line triggers or thresholds regarding numbers or types of providers that the Commission might rely on to grant forbearance where that number and type of provider is present.

293. Our conclusions regarding unconditional forbearance from Lifeline voice obligations in this proceeding under Section 10(a)(1) likewise are in accord with the Commission's Section 10(a)(1) analysis in the *2015 USTelecom Forbearance Order.* Particularly against the backdrop of our conclusions above that a detailed marketplace evaluation is needed to assess the effects of unconditional forbearance from Lifeline voice obligations, we agree that neither the limited evidence regarding the marketplace conditions nor the regulatory protections cited in granting certain high-cost voice forbearance in the *Dec. 2014 CAF Order* would be sufficient to justify forbearance under Section 10(a)(1) here. Indeed, as the Commission emphasized in the *2015 USTelecom Forbearance Order,* "in all census blocks, low-income consumers could be at particular risk if there are gaps in coverage within the area where the price cap carrier previously offered Lifeline service." We thus likewise find that unconditional forbearance from Lifeline voice service obligations is not warranted for High-Cost/Lifeline ETCs under Section 10(a)(1).

294. We likewise find on the record here that unconditional forbearance from the Lifeline voice obligation for High-Cost/Lifeline ETCs would not be in the public interest under Section 10(a)(3). In large part, this conclusion flows from the same considerations underlying our findings above that Sections 10(a)(2) and 10(a)(1) are not satisfied as to such forbearance. Further, insofar as commenters premise arguments for forbearance on the costs of complying with Lifeline rules, we

note that we streamline those requirements in various ways here (in addition to certain conditional forbearance from Lifeline voice service obligations that we do grant below). We also find applicable here the Commission's analysis rejecting forbearance from, among other things, Lifeline voice service obligations under Section 10(a)(3) in the *2015 USTelecom Forbearance Order*. We note in particular, as explained above, that we are unpersuaded by speculative arguments that unconditional forbearance will promote broadband policy goals. We thus conclude that unconditional forbearance from the Lifeline voice service obligation for High-Cost/Lifeline ETCs is not in the public interest under Section 10(a)(3).

295. Some commenters argue that for competitive neutrality or other reasons, existing ETCs with broad designations should be allowed to choose whether or not to provide Lifeline voice service, or that participation in Lifeline should be de-linked from participation in high-cost. We are not persuaded that such arguments are sufficient to justify forbearance from Lifeline voice service obligations. In particular, we are not persuaded that such concerns are sufficient to overcome our identified need for detailed marketplace information to evaluate unconditional forbearance from the Lifeline voice service obligation. Further, as the Commission observed in the *2015 USTelecom Forbearance Order,* the Section 214(e)(4) relinquishment process remains available to ETCs. Indeed, as we explain above, we interpret Section 214(e) to accommodate ETC designations specific to particular universal service mechanisms or programs. Insofar as ETC designations can be obtained on a mechanism- or program-specific basis, we likewise find it reasonable to interpret Section 214(e)(4) as allowing ETC designations to be relinquished on a mechanism- or program-specific basis. (Given the Commission's authority to interpret the Act, our interpretation of Section 214(e) governs all application of that provision, whether by the Commission or by a state). Thus, a High-Cost/Lifeline ETC would, for instance, be free to seek to relinquish just its ETC designation for Lifeline purposes without relinquishing its designation for high-cost purposes. We thus find no basis to depart from our conclusion above that unconditional forbearance is not warranted on the record here.

296. *Conditional forbearance.* Although we reject arguments for broader or different forbearance from Lifeline voice service obligations under the theories described above, we do find the Section 10(a) criteria met to grant conditional forbearance from the Lifeline voice obligation under a different theory for existing ETCs with designations enabling receipt of both high-cost support and Lifeline voice support. (By its terms, Section 214(e)(1), in pertinent part, imposes service obligations on telecommunications carriers—namely, ETCs. *See generally* 47 U.S.C. 214(e)(1). Failure to meet any applicable service obligations subjects carriers to potential enforcement by the Commission. *See, e.g.,* 47 U.S.C. 208, 503. Thus, we conclude that the Section 214(e)(1) service obligations represent provisions of the Act that the FCC can forbear from applying to a telecommunications carrier or class of telecommunications carriers where it finds the Section 10(a) criteria met, as we do in various respects in this Order, and as we have done in the past. We thus reject arguments suggesting that the Commission cannot grant ETCs relief from those obligations. We also note that an additional consequence of such forbearance is that states are precluded from applying the forborne-from provisions. 47 U.S.C. 160(e)). In particular, for such ETCs we grant forbearance from the obligation to offer and advertise Lifeline voice service where the following conditions are met: (a) 51% of Lifeline subscribers in a county are obtaining BIAS; (b) there are at least 3 other providers of Lifeline BIAS that each serve at least 5% of the Lifeline broadband subscribers in that county; and (c) the ETC does not actually receive federal high-cost universal service support. Notably, this condition allows us to reach a different conclusion than we do above regarding the impact of forbearance on our broadband policy goals. Because we conclude that this condition is likely to result in forbearance that promotes our broadband policy goals, our decision is resolved based on higher-level weighing and balancing of facts and policy considerations, rather than following a detailed marketplace evaluation as described in the *2015 USTelecom Forbearance Order* and in our analysis of unconditional forbearance above. This forbearance from the obligation to offer Lifeline voice service under Section 214(e)(1)(A) and our implementing rules also does not encompass the High-Cost/Lifeline ETC's existing Lifeline voice service subscribers served at the time the condition is met, further ensuring that consumers are adequately protected.

297. We conclude that such conditional forbearance is, on net, in the public interest under Section 10(a)(3) because it strikes the right balance between creating additional incentives for providers to promote the deployment and availability of broadband networks and services while adequately protecting the interests of low-income voice service users. In particular, it is clear from the record that a number of carriers that historically have provided Lifeline voice telephony service—particularly incumbent LECs—no longer wish to do so, at least not to the full extent they did so in the past. When existing High-Cost/Lifeline ETCs were designated, the designations broadly encompassed both high-cost and Lifeline voice mechanisms by default, consistent with the Commission's policy intent at the time—which we now depart from in certain respects, as described in this Order—and without the type of more nuanced designations that are feasible under our current interpretation and implementation of Sections 214(e) and 254. These ETCs also commonly provide both voice telephony service and BIAS (among other services), (Indeed, the provision of broadband Internet access service now is a public interest obligation associated with the receipt of high-cost universal service support), and it is our predictive judgment that providing relief from Lifeline voice service requirements based on an area reaching a defined level of Lifeline broadband subscribership and competition will give these providers strengthened incentives to take steps to promote subscribership, whether for their own broadband Internet access service offerings in particular or for broadband Internet access service offerings more generally.

298. Creating additional incentives for providers to promote broadband subscribership advances Section 254's goals of access to, and affordability of, advanced telecommunications services. The increased demand for, and usage of, broadband Internet access service that will be fostered by the broadband providers' efforts also will further Section 706 of the 1996 Act. (The Commission, for example, conducts its Section 706(b) inquiry regarding deployment and availability of advanced telecommunications capability under Section 706 by considering factors such as such as price, quality, and adoption by consumers, as well as physical network). We also are persuaded that forbearance from Lifeline voice service obligations also at least incrementally is likely to free up service provider funds

for broadband investment, while conditioning such forbearance on an area reaching a defined level of broadband penetration helps better ensure—in a way that unconditional forbearance does not—that such service provider funds are, in fact, used to promote broadband deployment and subscribership.

299. We recognize that the Commission has in the past identified the public interest benefits of promoting affordable voice service for low-income consumers, but we expect that any effect on such consumers from the conditional forbearance is likely to be limited, and outweighed by the anticipated broadband policy benefits. For one, we conclude elsewhere in this item that the need for such Lifeline-subsidized voice service is substantially reduced, leading us to phase out support for standalone voice service more generally. (Although we provide a multi-year phase-out for Lifeline support for stand-alone mobile voice generally, the potential for this Lifeline voice forbearance to grant relief from Lifeline voice service obligations on a more rapid timeframe is offset as to these consumers by the benefits in promoting our broadband policy goals). Moreover, as we explain there, we fully expect increasingly lower-priced voice service to continue to be available even absent a Lifeline benefit for standalone voice service, for example as part of packages or bundles of services including broadband Internet access service, which will remain subject to Lifeline support, and which this Lifeline voice forbearance does not affect. We thus conclude that the conditional forbearance we grant is unlikely to harm that set of consumers, nor, as to that group of consumers, is conditional forbearance likely to be in any tension with the principle in Section 254(b) to preserve and promote affordable service.

300. At the same time, we also recognize that our policy judgment about how best to transition the Lifeline program to become more broadband-focused envisions a continuing role for some Lifeline voice support, more so in the near term, but potentially even to some degree over the longer term. Based on the record, we cannot readily quantify the anticipated broadband policy benefits from this conditional forbearance, nor can we readily quantify any countervailing effects of forbearance on any low-income consumers who would prefer the Lifeline voice service offerings that otherwise would be available under our Lifeline rules if the Lifeline voice service obligation remained. (In particular, although we cannot precisely quantify the anticipated benefits of conditional forbearance in terms of broadband deployment and availability, the record also does not enable a price quantification of any costs of conditional forbearance. We thus weigh these considerations in the best manner feasible given the record and our associated policy judgment as described in the text. We note that the context of our forbearance decision here is different from that of a Section 10(c) petition, where the petitioner bears the burden of proof. Rather, our forbearance decision is conducted under the general reasoned decision making requirements of the APA. Nonetheless, we are persuaded that the public interest, on net, counsels in favor of forbearance for several reasons.

301. First, our conditional forbearance does not grant relief from the Lifeline voice service obligation as to those Lifeline subscribers that the High-Cost/Lifeline ETC serves at the time the forbearance condition is met. Those subscribers effectively are grandfathered to avoid possible disruption that otherwise might occur when forbearance newly applies in the area they live. We anticipate that this, in and of itself, is likely to protect the interests of many, if not most, Lifeline subscribers who prefer the legacy Lifeline voice service offerings, and whose interests we recognize in our broader Lifeline policy decisions. At the same time, the High-Cost/Lifeline ETCs have a discrete, well-defined remaining Lifeline voice service obligation, and can provide such subscribers incentives to transition to new service offerings to enable the ETCs to take full advantage of the Lifeline voice service forbearance.

302. Second, if the Commission were to deny conditional forbearance from Lifeline voice service obligations as to the remaining consumers—those who are not subject to the grandfathering described above—we expect that providers would need to retain much, if not all, of their infrastructure used to serve Lifeline voice subscribers just to potentially serve that narrower segment of overall Lifeline subscribers, not knowing if or when such subscribers might seek service. The High-Cost/Lifeline ETCs thus would continue incurring costs that they otherwise could direct to broadband investment. (By this we mean not only physical network infrastructure, but also other infrastructure like that required for billing and other administrative functions associated with providing Lifeline voice service). Insofar as the benefit of forbearance to providers thus would be substantially reduced, we conclude that this likewise would materially dampen—and in some cases, entirely eliminate—what otherwise would be increased incentives by those providers to spur greater broadband penetration.

303. Third, conditional forbearance from the Lifeline voice service obligation for High-Cost/Lifeline ETCs does not preclude carriers from electing to provide the supported Lifeline voice service and from receiving universal service support for doing so. Rather, it simply eliminates that mandatory obligation for them to do so under Section 214(e)(1) and our implementing rules. Further, as the Commission observed in the *Dec. 2014 CAF Order,* additional protections come from the service discontinuance process under Section 214(a) and the authority under Section 214(e)(3) to require a carrier to provide the supported service in a community or portion thereof requesting that service if no carrier will do so. (At the same time, we do not expect these regulatory backstops to materially diminish the incentives for existing High-Cost/Lifeline ETCs to promote deployment and availability of broadband Internet access in order to obtain the conditional forbearance. The Commission has considerable discretion in how it makes a Section 214(a) public interest finding, and as that process enables us to guard against unreasonable levels of customer hardship, we also recognize our interest in creating incentives for promoting broadband policy goals. In particular, the Commission traditionally considers a number of factors in assessing Section 214(a) discontinuance applications, including (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations. As observed in the prior paragraph, for instance, we recognize that a financial impact on the carrier of continuing to provide service could arise from the need to retain much, if not all, of their infrastructure used to serve Lifeline voice subscribers to serve what might be a relatively small segment of potential subscribers. Likewise, under Section 214(e)(3) the relevant regulatory authorities identify the carrier or carriers are best able to provide service to the relevant community or portion thereof, which need not be the carrier or carriers that availed themselves of this conditional forbearance. Insofar as our analysis is informed in part by the Section

214(e)(4) relinquishment mechanism (while not formally bound by it), these protections also give us comfort that we can guard against the unlikely scenario where no voice service at all ultimately would be available in a manner sufficient for purposes of the overall weighing of policy considerations and conclusions that conditional forbearance is not contrary to the interests of consumers and that conditional forbearance is in the public interest in this context). Moreover, this forbearance from the Lifeline voice service obligation does not alter the regulatory framework established in this order for Lifeline broadband service. ETCs providing Lifeline broadband service are likely to have incentives to seek to attract customers to their Lifeline broadband offerings and to maximize the utilization of their networks. Providing attractive voice service offerings to subscribers of their Lifeline broadband service is one way to help achieve that. Such offerings will provide further alternatives for low-income consumers. (Thus, although some commenters express concern about whether such alternatives will be sufficiently affordable, we find reason to believe that providers are likely to have incentives to make available affordable offerings. Moreover, our forbearance decision does not rest solely on this ground, but relies on it as part of a wider range of considerations, including our tailoring of the scope of forbearance to effectively grandfather an ETC's existing voice Lifeline subscribers, as described above, which will protect many of the relevant subscribers).

304. Fourth, we expect that the actions broadband providers take to promote broadband penetration in an effort to gain relief from Lifeline voice service obligations are likely to benefit low-income consumers, as well as the public more generally. In particular, we expect that providers seeking to trigger the conditional forbearance we grant are likely to undertake a variety of efforts, ranging from reducing the price and/or increasing the capabilities of a service at a given price point for retail broadband Internet access service offerings, making available attractive wholesale broadband Internet access service offerings, or undertaking other efforts such as digital literacy training or other measures to overcome barriers to broadband adoption. As broadband Internet access service becomes ever more important for all consumers, such efforts are likely to benefit many of the same consumers who currently might desire the otherwise-available Lifeline voice service offerings. In this scenario, then, the effects of conditional forbearance on such consumers inherently are themselves mixed, with benefits to those consumers coupled with, at most, some potential risks for those consumers.

305. Finally, we also expect that the efforts providers undertake to trigger the conditions necessary for Lifeline voice forbearance are likely to promote competitive market conditions for broadband Internet access service. As indicated above, we anticipate that by making available this conditional forbearance, providers will have incentives to take steps such as reducing the price and/or increasing the capabilities of their broadband Internet access service at a given price point to spur adoption of their own broadband Internet access service. Facilities-based providers with a voice obligation may also seek to offer attractive wholesale data prices, for example, so other Lifeline providers can also increase broadband penetration. Where there are alternative broadband Internet access service providers to the existing ETCs, such actions are likely to promote competition. Under Section 10(b), the Commission is directed, in making the Section 10(a)(3) public interest evaluation, to "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions." "If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest." Our finding that forbearance is likely to promote competitive market conditions reinforces the remainder of our analysis above, which persuades us that the conditional forbearance we adopt is in the public interest.

306. We are unpersuaded by claims that forbearance would be contrary to the public interest insofar as it might reduce the number of Lifeline voice service providers and/or competition for Lifeline voice service customers. Although competition for Lifeline service can have benefits, that must be evaluated in the context of other policy considerations. As we explain above, we are modernizing our Lifeline efforts to support broadband Internet access service given its importance to consumers and consistent with the Commission's responsibilities under Section 254 of the Act and Section 706 of the 1996 Act. At the same time, we find an at least somewhat diminished need for Lifeline-supported voice service where the relevant conditions are met. Moreover, we grandfather existing Lifeline voice service customers obtaining service at the time forbearance newly applies in a given county, providing protection for the customers at greatest potential risk of disruption. In this context, and for the reasons described above, we conclude that the conditional forbearance we grant properly weighs our various universal service objectives and our broader broadband policy goals, and that such forbearance is in the public interest.

307. We also reject arguments suggesting that the Act requires the Commission to prioritize competition in the provision of Lifeline-subsidized service over all other considerations. Although Section 214(e)(2) anticipates multiple ETCs, at least in some areas, ETC designation deals only with the eligibility for support, and does not actually guarantee the receipt of support—and, consequently, does not guarantee that all ETCs will provide services discounted through the receipt of universal service funding. We therefore conclude that in evaluating forbearance from the Lifeline voice service obligation, Section 214(e) does not require us to prioritize having a greater number of providers over the other policy considerations relevant in this context under Section 254 of the Act and Section 706 of the 1996 Act.

308. We also disagree that any diminution in competition or loss of options for voice service from conditional forbearance from the Lifeline voice obligation for High-Cost/Lifeline ETCs necessarily will leave only inferior or less desirable service offerings so as to render conditional forbearance contrary to the public interest. As we explain above, the extent to which the loss of competition or of particular service offerings is, in fact, likely to occur is itself speculative, particularly against the backdrop of other Lifeline reforms adopted in this Order. Moreover, any comparison of different service offerings involves some trade-offs, and we are not persuaded that the examples in the record demonstrate that a particular offering is inherently superior for all customers. (We also find it speculative whether, or to what extent, historical differences cited in the record are material to our analysis here and are likely to persist in the future, given our Lifeline reforms). We thus find no basis to depart from our Section 10(a)(3) determination above that conditional forbearance is in the public interest.

309. Nor does our conditional forbearance from the Lifeline voice service obligation in Section 214(e)(1) and our implementing rules interfere with state interests in a manner that cuts

against forbearance. Forbearance from these requirements under federal law does not alter regulatory obligations imposed under state law authority, and we thus reject arguments against forbearance on those grounds. Further, some commenters express concern that the providers required to offer voice service subsidized by state low-income support programs might no longer be providing federal Lifeline-supported voice service as a result of forbearance. Rather than trying to craft federal universal service policy to mirror the variations and nuances of state-adopted universal service programs, however, we conclude instead that it best serves the public interest and our statutory responsibilities to adopt the same conditional forbearance that is available in all areas of the nation where the conditions are met. States remain free, consistent with Section 254(f), to adopt their own universal service policies not inconsistent with those of the Commission, including, to the extent that they deem it warranted, modifying their own state low-income support programs to make funding available to a wider range of providers or to increase state support levels.

310. The forgoing analysis also persuades us that retaining the Lifeline voice service obligation in areas where the Lifeline broadband subscribership and competition condition is met is not necessary for the protection of consumers under Section 10(a)(2). For the reasons described in the paragraphs above, we conclude that consumers as a whole are likely to benefit more from our conditional forbearance than from retaining the Lifeline voice service obligation. Even as to low-income consumers who desire the Lifeline voice service offerings that otherwise would remain available under our rules, the result of forbearance appears to be at most mixed, and under these circumstances, particularly as guided by policies of Section 706 of the 1996 Act, we conclude that the Lifeline voice requirement is not necessary to protect consumers under Section 10(a)(2) where the Lifeline broadband subscribership and competition condition is met.

311. We also conclude that the Lifeline voice service obligation is not necessary to ensure just, reasonable, and not unjustly or unreasonably discriminatory rates and practices under Section 10(a)(1). As relevant to Section 10(a)(1), commenters' arguments appear to center on the effect of forbearance from the Lifeline voice service obligation on rates. Thus, we focus our Section 10(a)(1) analysis here by considering whether the conditional forbearance we grant from the Lifeline voice service obligation for High-Cost/Lifeline ETCs would have a negative effect on the justness and reasonableness of rates. Because we are dealing with obligations relating to supported services under Section 254, our interpretation of what is "just" and "reasonable" for purposes of Section 10(a)(1) is informed by Section 254. Notably, under Section 254(b)(1) and 254(i), the question of whether rates are "just" and "reasonable" is distinct from whether they are "affordable." Given the relevant overlay of Section 254 here, in this context we therefore consider under Section 10(a)(1) only whether the Lifeline voice service obligation is necessary to ensure just and reasonable and not unjustly or unreasonably discriminatory rates distinct from the question of affordability (which we fully consider in our analysis under other prongs above). (In particular, we consider possible effects on affordability of the services within the definition of universal service for Lifeline purposes under our public interest and consumer protection analyses above. We note that in the *2015 Lifeline FNPRM* the Commission granted forbearance from the ILECs' Section 251(c) resale obligation as it relates to Lifeline service, citing in its Section 10(a)(1) analysis the fact that "low-income consumers will still be able to receive Lifeline-supported services from both wireless and wireline providers." The fact that such a finding could be *sufficient* to demonstrate that Section 10(a)(1) is satisfied does not imply such a finding is *necessary* to demonstrate that Section 10(a)(1) is satisfied in the Lifeline context, particularly given the overlay of Section 254(b)(1) and (i) as discussed above. Moreover, we also reject arguments that granting such forbearance undercuts the Section 251(c) Lifeline resale forbearance previously granted, given our analysis here that conditional forbearance from the Lifeline voice service obligation is warranted under the Section 10(a) criteria without any presumption of a particular level of marketplace participation of Lifeline ETCs. For these reasons, as well as those stated in the text, in the context of our Section 10(a)(1) analysis here we reject arguments suggesting that affordability is an element of the justness and reasonableness of rates).

312. On the record here, we are not persuaded that the Lifeline voice service obligation is necessary to ensure just and reasonable rates or rates that are not unjustly or unreasonably discriminatory where the conditions on forbearance are met. Some of these areas will remain served by ETCs with high-cost voice service obligations, requiring them to offer and advertise voice telephony service throughout their designated service area. We find no basis in the record here to conclude that the rates charged for voice telephony services in these areas are likely to be unjust, unreasonable, or unjustly or unreasonably discriminatory as relevant to our Section 10(a)(1) inquiry here if we forbear from the Lifeline voice service obligation where the relevant conditions are met.

313. As to the remaining areas, the Commission granted forbearance from high-cost voice service obligations only after concluding that competition and other regulatory protections were adequate to, among other things, ensure just and reasonable and not unjustly or unreasonably discriminatory rates. We find no basis on the record here to reach a different conclusion regarding forbearance from the Lifeline voice service obligation in these areas under Section 10(a)(1), insofar as the relevant conditions on forbearance are satisfied.

314. As an overlay to the forgoing analysis regarding voice telephony service rates, we note that in evaluating forbearance from applying Lifeline voice service obligations to a class of telecommunications carriers (carriers that are ETCs for both high-cost and legacy Lifeline voice purposes), Section 10(a)(1) speaks to the justness and reasonableness of rates (and practices) by those telecommunications carriers generally. Although we consider whether forbearance from the Lifeline voice service obligation will affect the justness and reasonableness of rates for voice telephony service, we also consider the effect of forbearance on these ETCs' broadband Internet access service. As described above, we anticipate that the potential to achieve conditional forbearance will spur ETCs to take actions that spur competition in the marketplace for broadband Internet access service. The Commission previously has recognized that competition helps ensure just and reasonable rates. As part of our Section 10(a)(1) analysis, we thus include the predictive judgment that, in the context of broadband Internet access service, forbearance is likely to have some effect in promoting or enhancing just and reasonable rates. Under the totality of the analysis above, we therefore find that the Lifeline voice service obligation is not necessary to ensure just, reasonable, and not unjustly and unreasonably discriminatory rates and practices under Section 10(a)(1).

315. *Details of the forbearance condition.* We adopt a condition on

forbearance from the Lifeline voice service obligation for High-Cost/Lifeline ETCs that we conclude is intended to create incentives for those carriers to promote broadband Internet access service subscribership and competition, targeted in this context to low-income consumers. To this end, forbearance from the Lifeline voice service obligation is granted where the following conditions are met: (a) 51% of Lifeline subscribers in a county are obtaining Lifeline broadband Internet access service; (b) there are at least 3 other providers of Lifeline BIAS that each serve at least 5% of the Lifeline broadband subscribers in that county; and (c) the ETC does not actually receive federal high-cost universal service support. (Because we find forbearance warranted where these readily-identifiable triggers are met, we reject concerns that forbearance from the Lifeline voice obligation would raise administrability concerns that counsel against such relief). As explained earlier in this Section, a number of High-Cost/Lifeline ETCs have argued that application of the Lifeline voice obligation to them is unnecessary given other alternative voice options, and that such regulatory relief would free up resources to enable the advancement of broadband policy goals. The condition on forbearance that we adopt today enables us to ensure—in a way that those providers' proposals themselves did not—that regulatory relief from such ETCs' Lifeline voice service obligations genuinely will advance our broadband policy goals. We further expect that the resulting broadband marketplace not only will advance our broadband policies but will itself foster additional affordable options for voice service, as well.

316. We adopt the first two elements of our forbearance condition to advance our policy goals of creating incentives to promote broadband Internet access service subscribership and competition, particularly for low-income consumers, but recognize that we are engaged in a line-drawing exercise that cannot be resolved by available data. Regarding our subscribership criteria, we find that a requirement that a county have at least 51 percent of Lifeline subscribers that are subscribing to Lifeline broadband Internet access service establishes a threshold demonstrating that a meaningful portion of Lifeline subscribers are taking advantage of our new Lifeline broadband program. (As we explain elsewhere, given the increasing importance of broadband Internet access service today we are modernizing our universal service policies for low-income subscribers to reflect that increased importance, and taking this step to further promote broadband Internet access service subscribership by low-income consumers helps advance those overall goals). At the same time, we recognize that, because the Lifeline broadband program is newly-established, setting the threshold too high could result in diminished or delayed incentives by High-Cost/Lifeline ETCs to encourage such subscribership and competition if the threshold was viewed as unattainable in any reasonable timeframe. We believe the threshold we adopt appropriately balances these considerations.

317. Our competition criteria likewise seeks to balance our goal of promoting a meaningful level of competition for Lifeline broadband Internet access service subscribers, with the realities that this is a new program. (As explained earlier in this Section, we conclude that it advances our universal service policy implementation of Section 254 of the Act to promote competition for Lifeline broadband services). A requirement that a county have at least 3 other providers of Lifeline BIAS besides the High-Cost/Lifeline ETC that would avail itself of our forbearance, with each of those other Lifeline broadband providers serving at least 5 percent of the Lifeline broadband subscribers in the county demonstrates some level of competition. (The Commission has previously acknowledged that competition between even two providers theoretically can result in meaningful competition in some circumstances, but by adopting a materially higher threshold for the number of competitors we avoid such questions. By requiring that each of the other providers need only serve 5% of the Lifeline broadband Internet access service subscribers we are persuaded that that this threshold remains realistically attainable, while guarding against the possibility of counting purely *de minimis* providers in identifying the counties where forbearance applies. We emphasize that in this context we seek to identify readily-administrable bright-line thresholds that establish meaningful thresholds while balancing the need to set them at feasibly attainable levels to ensure appropriate incentives for High-Cost Lifeline/ETCs to pursue steps that result in regulatory relief. We therefore caution that the particular thresholds we adopt here do not necessarily reflect how the Commission will evaluate competition in any other context). It also is our predictive judgment that, even though the Lifeline broadband program is new, and some providers thus will need to seek Lifeline broadband ETC designations before competing for those subscribers, this threshold is likely to be realistically attainable in many circumstances. (We note in this regard that we take other steps in this Order to facilitate competition for Lifeline broadband services).

318. The subscribership and competition thresholds we adopt also have the advantage of being calculations we can make based on NLAD, state administrator, or National Verifier data. Those data will be readily available to the Commission, making these calculations readily administrable. In the interim period of time before the National Verifier is in place, we direct USAC to obtain and have systems for regularly updating the relevant data from the NLAD or from the states that have opted-out of the NLAD by December 1, 2016. (One of the requirements for any state that opted-out of the NLAD was that it ensure that the Commission and USAC would have access to records as needed for oversight purposes). In addition, because the NLAD or National Verifier data (as well as the state data) are, in the first instance, used to guard against improper universal service support disbursements, there already is a strong incentive to ensure that they are as accurate and up-to-date as possible. We also direct USAC, in coordination with the Bureau, to collect as part of its administrative function the information necessary to determine whether Lifeline consumers are receiving Lifeline-supported BIAS either on a standalone basis or as part of a bundle so that the necessary determinations called for can be made.

319. We further conclude that evaluating whether the condition is met at the county level strikes a reasonable balance in this context. Smaller geographic areas could have more widely variable numbers of Lifeline subscribers, leading to anomalous results under our subscribership and competition thresholds that do not accurately capture the policies we are seeking to advance. (For example, as of the end of 2015 USAC estimates that there were approximately 13.1 million subscribers participating in Lifeline. Thus, on average, there are approximately 172 Lifeline subscribers per census tract. In practice, however, we anticipate that there is likely to be sufficient variability census tract-to-census tract that some tracts could have only an extremely small number of Lifeline subscribers. Use of census tracts

as the geography could, in those cases, mean that the subscribership threshold is met based on only an extremely small number of Lifeline broadband Internet access subscribers and/or that it might be very difficult for three additional providers to offer Lifeline service in that tract and each have at least 5% share of Lifeline broadband subscribers. These problems would be exacerbated by using even smaller geographic areas for purposes of the condition). On the other hand, larger geographies could encompass sufficiently significant areas outside a given High-Cost/Lifeline ETC's service territory as to render it much more difficult for that ETC to promote Lifeline broadband subscribership and competition to a sufficient degree to qualify for the forbearance from the Lifeline voice service obligation. (Many ILEC study areas are far smaller than a state, for example). The less realistically attainable the condition appears, the less the provider will have incentives to take the broadband-promoting actions we seek to advance in an effort to realize forbearance. Other geographies, such as study areas or service areas, can vary considerably provider-to-provider and we are not persuaded that using such geographic areas for applying our condition would result in similarly-situated providers being treated similarly. Although we have not identified any single, ideal geographic area to rely on for purposes of our condition, we conclude that calculations at the county level provides a reasonable middle ground relative to larger, smaller, or even more variable alternatives. (Counties fall within the range of geographies that the Commission reports in the context of its broadband progress reports, for example).

320. In a county where the first two criteria of our forbearance condition are met, our forbearance from the Lifeline voice service obligation is further conditioned on the High-Cost/Lifeline ETC not actually receiving federal high-cost universal service support. Thus, for any county where the first two criteria of our forbearance condition are met, our conditional forbearance from the Lifeline voice obligation only applies in those areas within the county where the High-Cost/Lifeline ETC is not, in fact, receiving federal high-cost universal service support. In areas where the ETC does receive federal high-cost universal service support, the public, through the federal universal service fund, is making an ongoing investment in the ETC's provision of voice telephony service and in the underlying broadband-capable network used to offer that service. In that context, we are persuaded that there is an ongoing, overriding policy interest that such networks and services—already being supported by universal service support, with the associated high-cost voice service obligation—continue to be available to advance our low-income voice policy goals, as well. By contrast, where there is no such ongoing federal high-cost universal service investment, we are persuaded that the potential to advance our broadband policy goals tips the balance in favor of forbearance for all the reasons described in this Section above. (In the context of the overall balancing of policy interests with respect to the conditional forbearance we grant, we thus reject arguments that high-cost ETCs should perpetually have Lifeline voice service obligations throughout their entire designated service areas).

321. To effectuate this condition on forbearance, we direct USAC, one year after the effective date of this Order and annually thereafter, to submit data to the Bureau to enable the identification of counties where the subscribership and competition criteria are met. After review, within thirty days of the receipt of these data from USAC, we direct the Bureau to issue a Public Notice announcing the counties where the subscribership and competition criteria of our forbearance condition are met. Sixty days after the release of that Public Notice, forbearance from the Lifeline voice service obligation will apply to each High-Cost/Lifeline ETC in the identified counties insofar as each ETC is not receiving high-cost support. This forbearance will continue to apply in each county identified in the Public Notice—subject to the high-cost support condition—until sixty days after the next year's Public Notice. At that time, the list of counties identified in the next year's public notice will govern, including any additions of newly-qualifying counties or the elimination of counties that no longer meet the criteria (and thus no longer fall within the scope of the conditional forbearance).

(iii) Lifeline Broadband Provider ETCs

322. As explained above, we interpret Section 214(e)(1) to impose service obligations on ETCs that mirror the service defined as supported under Section 254(c) in the context of the specific universal service rules, mechanisms, or programs for which they were designated. Consequently, providers that obtain an ETC designation as an LBP receive a designation that is specific to the Lifeline broadband program and will only have Section 214(e)(1) service obligations for BIAS. Thus, by default, providers do not have any Lifeline voice service obligations as a result of their designation specifically as an LBP.

d. Obligation To Advertise the Availability of and Charges for Lifeline Service

323. In addition to the actions described above, we further encourage competition and market entry in the Lifeline program by interpreting ETCs' obligation to advertise the availability of Lifeline services and the charges thereof for purposes of receiving reimbursement from the Lifeline program. We find that interpreting ETCs' obligations under Section 214(e)(1)(B) will provide clarity and reduce burdens on providers, making it easier to enter and remain in the Lifeline program.

324. Under Section 214(e)(1)(B) of the Act, an ETC must, among other requirements, "advertise the availability of such services and the charges therefor using media of general distribution." The requirement to advertise the availability and price of service on "media of general distribution" creates ambiguity that, added with other obligations for ETCs, can discourage providers from seeking designation and entering the Lifeline program. This ultimately harms Lifeline-eligible consumers, who are left with few choices among discounted services. However, as Free Press and New America's Open Technology Institute have argued, we acknowledge that the requirement to advertise the availability and price of service need not necessarily be overly burdensome if implemented properly.

325. We therefore find that, while the requirement to advertise the availability and price of service is a useful one, the Commission can reduce the perhaps unintended burden of this provision on carriers by interpreting the phrase "media of general distribution" to provide further clarity. Under Section 214(e)(1)(B), "media of general distribution" is any media reasonably calculated to reach the general public or, for an LBP, the specific audience that makes up the demographic for a particular service offering. For example, for an LBP partnering with a school to offer Lifeline-discounted BIAS to that school's community, "media of general distribution" may include flyers, newspaper advertisements, or local television advertisements in that school's geographic area. For a Lifeline-only broadband ETC offering a service designed with eligible low-income subscribers with hearing disabilities, "media of general distribution" may include web advertisements reasonably

calculated to reach the relevant community, mail, email, or other text-based methods of advertising.

326. Combined with our other actions in this Order to encourage provider participation in the Lifeline program and create a robust, competitive market for Lifeline subscribers, we expect that our interpretation of the requirement of Section 214(e)(1)(B) will give clarity to participating providers and remove one more potential source of uncertainty to encourage providers to enter the program.

F. Lifeline Service Innovation

327. To fully obtain the benefits of a modernized Lifeline program, the Commission and others must encourage and facilitate the meaningful access and adoption to quality advanced telecommunications services among low-income households. We recognize that in order to access and adopt advanced telecommunications services, households will require devices that enable them to bridge the digital divide. We therefore require Lifeline providers that provide both supported mobile broadband service and devices to their consumers to provide devices that are Wi-Fi enabled, and we also require the same providers to offer the choice to Lifeline customers of devices that are equipped with hotspot functionality. We also require fixed broadband Lifeline providers that provide devices to their customers to provide devices that are Wi-Fi enabled. The requirement to provide Wi-Fi-enabled devices does not apply to devices provided to consumers prior to the effective date of the requirement. Additionally, we direct the Consumer and Governmental Affairs Bureau (CGB) to develop a comprehensive plan for the Commission to better understand the non-price barriers to digital inclusion and to propose how the Commission can facilitate efforts to address those barriers.

1. Bridging the "Homework Gap" and "Digital Divide" With Wi-Fi and Hotspot-Enabled Devices

328. In recognition of the need for students, job applicants, and others to access the Internet on multiple platforms and in various ways we now require Lifeline providers that provide supported broadband service and devices to their consumers to provide devices that are Wi-Fi enabled, and to offer devices that are equipped with hotspot functionality. We adopt these requirements because Wi-Fi enabled phones are essential tools to help individuals stay connected, and because the hotspot requirement will help to ensure that households without fixed Internet access will be able to share their access to the Internet among multiple members if so desired.

329. *Discussion.* In the *2015 Lifeline FNPRM* the Commission recognized the need for forward-thinking, innovative solutions to address the "digital divide" and the "homework gap," and emphasized that it was vital for low-income consumers to "have access to broadband-capable devices that provide the ability to send and receive critical information, as well as broadband service with sufficient capacity, security, and reliability to be dependable in times of need." In its comments TracFone emphasized a similar point, and stated that "Lifeline providers offering no charge Lifeline services can—and should be—required to provide such Wi-Fi enabled devices." We conclude that Lifeline providers who make devices available with or without charge for use with a Lifeline-supported fixed or mobile broadband service must ensure that all such devices are Wi-Fi enabled. (This requirement does not apply to devices provided to consumers prior to the date that the new requirement goes into effect.) Lifeline providers who make devices available with or without charge for use with a Lifeline-supported mobile broadband service must also offer devices that are capable of being used as a hotspot. (We note that while we decline to support devices as discussed *supra* in para. 105, these requirements are only conditions for receiving support *if* the Lifeline provider chooses to provide devices for the purpose of extending the connectivity supported by Lifeline. Lifeline providers retain the flexibility to decide whether to provide devices in general and if so, what amount to charge, if any, for a device). By conditioning support for Lifeline services in this way, we seek to increase the value of the supported connection so that Lifeline consumers can regularly and reliably access the Internet.

330. As explained in more detail in the paragraphs that follow, this condition on support under the Lifeline broadband mechanism for providers that make devices available to Lifeline subscribers promotes Lifeline subscribers' access to advanced services and the affordability of those services. Importantly, the condition guards against the risk that the Lifeline subscribers and their households would be hindered in their ability to avail themselves of options for using the Internet that are less expensive than purchasing additional usage or additional services as could be necessitated if Lifeline providers only provided devices that lack the capabilities required under this condition. Adopting this condition on the Lifeline broadband support mechanism advances the objectives in Section 254(b) and (i) of the Act, as well as our responsibilities under Section 706 of the 1996 Act. The Commission has invoked Section 254(b) of the Act and Section 706 of the 1996 Act to place conditions on the receipt of universal service support in the past, and courts likewise have affirmed conditions on the receipt of universal service support in other ways. Greater availability of devices with the capabilities we require under our condition also provides greater incentives for the public to fund advanced services to schools and libraries, including those in low-income areas, given that a larger proportion of the students or patrons can avail themselves of the opportunities made available, thereby advancing additional objectives of Section 254 of the Act and Section 706 of the 1996 Act. We discuss the specific elements of our condition on Lifeline broadband funding in greater detail below.

331. *Wi-Fi Enabled.* Wi-Fi enabled devices help many of the most vulnerable members of society stay connected. Many public buildings, such as schools and libraries, offer public Wi-Fi access and a Lifeline consumer with a Wi-Fi enabled device will be able to take advantage of public Wi-Fi networks and look for jobs, check email, or make a doctor's appointment, all without using any mobile data. This ensures consistent Internet access even when a Lifeline consumer is away from home, and it allows the consumer to save money and avoid going over any data caps, and it also helps to bridge the homework gap, as students with Wi-Fi enabled devices can utilize public Internet networks to complete their assignment. As we noted in the *2015 Lifeline FNPRM,* in some communities students must go to local restaurants to use Wi-Fi to study. While this situation is far from ideal, it highlights the vital importance of Wi-Fi enabled devices as a complement to a consumer's primary broadband service, because without these devices many students would be unable to access the Internet outside of the classroom at all. Additionally, a "substantial majority" of American consumers already own Wi-Fi enabled smartphones, as 88 percent of new phone purchases, and 77 percent of total mobile phones, are Wi-Fi enabled smartphones. Furthermore, Wi-Fi enabled routers and modems for use with fixed broadband service also increase the value of the connection by

allowing simultaneous use of multiple devices of varying types.

332. *Hotspot Functionality.* Next, we adopt a phased-in requirement that recognizes the importance of devices with hotspot functionality to help connect households to the Internet. Many of the most economically vulnerable members of society do not have fixed Internet access, and rely solely on mobile devices. A recent report indicates that 7 percent of Americans are "smartphone dependent," meaning that a smartphone provides their only access to the Internet. In households without fixed broadband, using a smartphone or other device as a mobile hotspot can help to partially alleviate this limitation and permit others in that household to access the Internet. The Commission previously stated that tethering can provide mobile broadband consumers "access to the same applications and functionalities as consumers served through fixed connections." A typical American household has 2.3 smartphones, along with additional devices capable of accessing the Internet. In a household with Wi-Fi enabled devices and no fixed Internet connection, a tethered connection can help to ensure Internet access for multiple family members. A student can do research for a homework assignment at the same time her parents send emails or apply for jobs. This assists in bridging the homework gap for those students, helping make them competitive academically and better preparing them for the challenges of the 21st Century. A hotspot enabled device also helps bridge the digital divide, and efficiently maximizes the value of a single mobile broadband connection. Devices with hotspot functionality are also becoming increasingly ubiquitous, and in order for a consumer to utilize the benefits of mobile broadband, the consumer should have to the choice of a device that provides access to hotspot functionality. Because devices that are equipped with hotspot functionality are valuable tools to keep individuals and families connected to the Internet, we conclude that Lifeline providers who provide devices to their consumers should include devices with this capability among other offerings. (We clarify that this does not require Lifeline providers offering broadband service to necessarily provide a device. Furthermore, this requirement does not prevent a subscriber using a device not provided by the Lifeline provider of the supported service. Rather, to the extent the Lifeline provider, its affiliate(s), or business partner make devices available to the Lifeline subscriber, such devices must be Wi-Fi-enabled, and hotspot-enabled devices must be offered if the Lifeline provider is to receive Lifeline support). In addition, because of the importance of tethering to bridging the "digital divide," providers may not impose an additional cost on tethering service for tethering that does not exceed the relevant minimum service standard for mobile broadband data usage allowance. (As an example, if the applicable minimum service standard for mobile broadband data usage allowance is 2 GB, a provider may not impose a tethering-specific fee or surcharge for tethering if the 2 GB data usage allowance has not been reached. Providers may charge consumers who choose to purchase data above the minimum data usage allowance).

333. To ensure that the market can adjust and reflect the evolution of available devices while also ensuring that consumers have affordable choices, we adopt a phase in transition for this requirement. Beginning in December 1, 2016, we require that providers of broadband Lifeline service that make devices available include at least one device that has hotspot capability. Building on that, fifteen percent of the devices a provider makes available from December 1, 2017 to November 30, 2018 shall be hotspot enabled. Twenty percent of the devices a provider makes available from December 1, 2018 to November 30, 2019, shall be hotspot enabled. Twenty-five percent of the devices a provider makes available from December 1, 2019 to November 30, 2020 shall be hotspot enabled. Thirty-five percent of the devices a provider makes available from December 1, 2020 to November 30, 2021 shall be hotspot enabled. Forty-five percent of the devices a provider makes available from December 1, 2021 to November 30, 2022 shall be hotspot enabled. Fifty-five percent of the devices a provider makes available from December 1, 2022 to November 30, 2023 shall be hotspot enabled. Sixty-five percent of the devices a provider makes available from December 1, 2023 to November 30, 2024 shall be hotspot enabled. Seventy-five percent of the devices a provider makes available beginning December 1, 2024 onward shall be hotspot enabled. We believe that this approach ensures that consumers have robust choices—both with and without hotspot functionality. Accordingly, we amend Section 54.422(b) of our rules to require carriers to certify their compliance with these requirements on our Form 481.

2. Importance of Digital Inclusion

334. In this Section, we direct the Consumer and Governmental Affairs Bureau (CGB) to develop a comprehensive plan for the Commission to better understand the non-price barriers to digital inclusion and to propose how the Commission can facilitate efforts to address those barriers. This plan should address promoting digital inclusion generally and also as it particularly relates to the new Lifeline program established in this Order. CGB should specifically work with other bureaus and offices, as well as USAC, to ensure all Lifeline stakeholders' views are incorporated into this effort. We direct CGB to submit this plan to the Commission within six months of the effective date of the order. Through this effort, we initiate an ongoing campaign to build the Commission's digital literacy capacity and to keep us apprised and abreast of the state of digital inclusion across the country.

335. Lowering non-price barriers to digital inclusion is an important component of increasing the availability of broadband service for low-income consumers. As explained above, the key purpose of our actions in this order is to increase the affordability of broadband service, which remains the chief impediment to broadband adoption among low-income consumers. We nonetheless recognize, and concur with, the findings of other governmental and private researchers that there are multiple barriers to digital inclusion among low-income consumers. (Digital inclusion includes but reaches beyond broadband adoption and affordability). Notably, lack of digital literacy and perceived relevance are significant non-price barriers. All of these barriers are interrelated. Recent studies confirm that consumers may consider broadband service to be relevant if other barriers, such as digital literacy and price are overcome. The fact that a consumer may not be able to afford broadband service may also reduce the relevance of broadband service to that consumer. Many low-income consumers that are online may not be able to take advantage of all that the Internet has to offer. By one estimate, approximately 36 million Americans don't use the Internet at all and approximately 70 million Americans have low digital skills. Based on the foregoing, we believe that low-cost broadband coupled with strategic, effective digital inclusion efforts will significantly impact the lives of millions of consumers across the Nation, particularly those with lower incomes and in key demographic groups, such as

seniors, veterans, persons with disabilities, rural communities, and those living on Tribal lands, many of which may also have an increased need for access to educational, public health and/or public safety services. Accordingly, we find that the public interest would be served by building upon earlier efforts by the Commission and others to study and monitor the impact of digital inclusion efforts.

336. We recognize the important role consumer groups, community and philanthropic organizations, local government, and industry stakeholders play in assisting consumers in overcoming the non-price barriers to digital inclusion. Therefore, CGB's plan should include proposals for engagement of these groups to explore strategies for promoting increased broadband adoption as well as increased digital literacy of low-income and other consumers. In its plan, CGB should explore how to connect efforts to increase the availability of affordable service and equipment, digital literacy training, and relevance programming to make digital inclusion a reality in light of the modernized regulatory framework.

337. In addition, we encourage Lifeline providers to work with schools, libraries, community centers and other organizations such as food banks and senior citizen centers that serve low-income consumers to increase broadband adoption and address non-price barriers to adoption. Providers should make available contact information for Lifeline subscribers as part of their outreach. CGB's plans should further this objective. Broadband can be a critical tool for seniors to realize many economic and health gains as well as increased socialization, but seniors lag behind other demographic groups in terms of adoption and digital inclusion. Education and awareness programs targeting seniors can be effective in overcoming these barriers and increasing broadband adoption among low-income seniors.

338. CGB's plan should propose how it will convene stakeholders, including both Lifeline and non-Lifeline broadband providers, community and philanthropic organizations, local governments, and anchor institutions to explore how digital inclusion efforts can be tailored to local conditions by trusted community-based partners to maximize their effect. Digital inclusion organizations have found that the most successful training is provided through a trusted, community-based partner that provides the social support necessary for increasing broadband access. Moreover, local social and demographic conditions may make one solution work in one place while another approach is more appropriate elsewhere. Based on their experience, many digital inclusion organizations have moved from classes to one-on-one training to improve outcomes. One-on-one training can be the most effective in part because it helps lower the barrier of perceived relevance; each consumer learns how the Internet can assist them accomplish tasks of particular importance to them. CGB's plan should address how digital inclusion organizations can share their experience in tailoring digital inclusion efforts to local conditions.

339. In addition, CGB's plan should address information and studies available from digital inclusion experts regarding best practices for increasing the digital skills of those already online and how those best practices can be spread throughout the digital inclusion community. Digital literacy efforts can increase the digital inclusion of those who already have access to the Internet to be fully "digitally ready." Schools, libraries, and community organizations across the country have already begun developing digital learning curriculums that have enabled low-income populations to more meaningfully engage with all the Internet has to offer. Some of the same community-based, grass-roots approaches to increasing digital inclusion for those who do not have access may also be useful in closing the digital readiness gap among those that already have access to broadband. As with programs promoting digital inclusion generally, a "one-size-fits all" solution to increasing digital skills may not be the most efficient or effective approach. CGB's plan should propose how to facilitate communication among these organizations regarding how to tailor digital inclusion efforts to deepen the value of broadband to those already online.

3. Lifeline Service Stability

340. To further incentivize investment in high-qualify Lifeline service offerings, we implement Lifeline benefit port freezes—of 12 months for data services and 60 days for voice services—that will give providers greater certainty when planning new or updated Lifeline offerings. Providers may not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who used the Lifeline benefit to enroll in a qualifying Lifeline-supported BIAS offering with another Lifeline provider within the previous 12 months. Providers also may not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who used the Lifeline benefit to enroll in a qualifying Lifeline-supported voice telephony service offering with another Lifeline provider within the previous 60 days. These port freeze rules for both BIAS and voice service will be subject to certain conditions to ensure Lifeline consumers are sufficiently protected.

341. *Twelve-month benefit port freeze for Lifeline-supported broadband service.* To facilitate market entry for Lifeline-supported BIAS offerings, provide additional consumer benefits, and encourage competition, we now establish that providers may not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who used the Lifeline benefit to enroll in a qualifying Lifeline-supported BIAS offering with another Lifeline provider within the previous 12 months, except as explained below. (For the purposes of this Section, the use of the term "transfer" is meant to include any mechanism to move a subscriber from one carrier to another, and the 12-month period will be measured from the subscriber's service initiation date. As a function of the 12-month port freeze, USAC will determine the best method and practices to handle carrier de-enrollments to prevent improper practices by carriers to circumvent the port freeze.) We find that allowing broadband providers the security of a longer term relationship with subscribers will incentivize greater up-front investments from providers. Those investments in broadband-capable devices and broadband services should improve the quality of new offers for subscribers and further spur competition among providers to offer more innovative services. While we acknowledge that this rule will decrease Lifeline providers' incentive to compete for customers that have recently signed up with another Lifeline provider, we find that Lifeline-eligible consumers will nonetheless benefit more from a Lifeline market in which a benefit port freeze gives providers stronger incentive to vigorously compete for eligible customers through better broadband service offerings and outreach.

342. Except in circumstances described below, providers may not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who used the Lifeline benefit to enroll with another Lifeline provider for qualifying Lifeline-supported BIAS service within the previous 12 months. For a subscriber to continue receiving the Lifeline benefit after the subscriber has received Lifeline-supported service from a provider for 12 months, the subscriber

must be recertified as eligible, at which point the subscriber may choose to receive Lifeline-supported service from the same Lifeline provider month-to-month, being recertified every 12 months. If, however, the subscriber switches to a different Lifeline provider after the initial 12-month period, a new initial 12-month period will begin with the new Lifeline provider. (If the subscriber opts to continue receiving service from her current Lifeline provider at the end of the initial 12-month period, that provider may not temporarily "terminate" the subscriber's service for purposes of obtaining a second 12-month port freeze immediately following the first. Additionally, as part of the transfer of the subscriber's benefit, the new Lifeline provider will follow the same subscriber enrollment rules for a new subscriber, such as verifying eligibility and beginning a new 12-month recertification cycle). Lifeline disbursements will be made by USAC to the Lifeline provider each month, as in the current program, and we expect this eligibility modification to encourage Lifeline providers to offer more robust services in light of the additional customer certainty this rule change provides.

343. A provider that enrolls Lifeline-eligible subscribers cannot materially change the initial terms or conditions of that service offering without the consent of the subscriber until the end of the 12 months, except to increase the offering's speeds or usage allowances. Changes that lower the quality or speed of service, lower the offering's usage allowance, or increase the service's price are presumptively material changes to the terms or conditions of service, even if such changes are made in response to an amendment to the Commission's rules or a change to the Lifeline program's minimum service standards. If a subscriber cancels service or is de-enrolled for non-usage, the Lifeline provider cannot continue to receive reimbursement for that subscriber, nor can the subscriber re-enroll in the program with another provider until the end of the initial 12-month period. Where permitted by the terms and conditions of the service offering, a Lifeline subscriber at any time may move their Lifeline benefit to a different qualifying Lifeline service offered by the same provider, whether broadband, voice, or a bundled offering so long as the service is eligible for support by the Lifeline program. However, if the subscriber switches to another plan offered by the Lifeline provider that offers Lifeline qualifying voice telephony service but not Lifeline qualifying BIAS, the subscriber's 12-month port freeze will end immediately and the subscriber will instead be subject to a 60-day benefit port freeze.

344. *Sixty-day benefit port freeze for Lifeline-supported voice telephony service.* A Lifeline provider also may not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who used the Lifeline benefit to enroll in a qualifying Lifeline-supported voice telephony service offering with another Lifeline provider within the previous 60 days, except in circumstances explained below. (For the purposes of the 60-day port freeze, the period will begin to run from the subscriber's service initiation date). We find that, for the reasons described above, a benefit port freeze will encourage provider investment and high-quality service offerings in voice telephony service as well as BIAS. However, since the service and device costs associated with standalone voice telephony service are generally lower than costs for comparable broadband offerings, the benefit port freeze for Lifeline-supported offerings that do not meet the program's minimum service standards for BIAS need not be a full 12 months. Instead, we find that the existing 60-day period administered by USAC is sufficient to encourage investment and quality offerings for voice services, and we accordingly codify that period in our rules.

345. *Exceptions to the BIAS and voice telephony Lifeline benefit port freezes.* In certain circumstances, however, an eligible low-income subscriber may transfer their Lifeline benefit to another provider prior to completion of the 12-month period. A subscriber may transfer their Lifeline benefit to another provider prior to completion of the 12-month period if:

- The subscriber moves their residential address;
- the provider ceases operations or otherwise fails to provide service;
- the provider has imposed late fees for non-payment related to the supported service(s) greater than or equal to the monthly end-user charge for service; or
- the provider is found to be in violation of the Commission's rules during the benefit year and the subscriber is impacted by such violation.

346. In any of the above circumstances, Lifeline subscribers may cancel service and receive a new Lifeline-supported service with another provider until the end of the *original* 12-month period. In these circumstances, the subscriber is not required to re-verify eligibility until the end of the original 12-month period. In such cases, we direct USAC to implement a process for facilitating the necessary sharing of information between the Lifeline providers so the subscriber's benefit can be transferred to the new provider in accordance with Commission rules. We also direct USAC to make necessary modifications to the NLAD for enforcing these rules and to incorporate such functionality into the National Verifier. We also require states that have opted-out of the NLAD, in coordination with USAC, to update their systems and processes to implement this rule. We insert Section 54.411 of our rules to establish when and under what circumstances a subscriber may transfer his or her Lifeline benefit to a new provider. Our addition of Section 54.411 of the Commission's rules, as discussed in this Section, will become effective 60 days after announcement in the **Federal Register** of OMB approval of the subject information collection requirements or December 1, 2016, whichever is later.

G. Managing Program Finances

347. In the *2015 Lifeline FNPRM,* we sought comment on establishing a budget for the Lifeline program, and determining an appropriate budget amount. While many commenters supported instituting a budget, some worried that a budget would lead to eligible consumers being denied Lifeline support or being placed on waiting lists. Still others argued that sufficient data to set a budget for the program is not available and the Commission should decline to adopt a budget at this time. We conclude that a budget mechanism, implemented as described below, will ensure the financial stability of the Lifeline program and guarantee access to all eligible consumers, and we revise Section 54.423 the rules. Given the significant changes we adopt today, we find it prudent to apply this budget to the Lifeline program at this time rather than wait until after implementation of the changes. In so doing, we must balance the need to ensure that the Lifeline program continues to reduce the contribution burden on the nation's ratepayers, will continue to support service to eligible consumers, and will provide information to the Commission as it monitors the Lifeline program's growth following such significant programmatic changes.

348. *Initial Budget Amount.* We adopt an initial annual budget of $2.25 billion based on our projections of how the program will be updated once BIAS is a supported service. This budget will apply for the calendar year beginning January 1, 2017. We arrive at this level

by considering current participation rates, possible growth of the program as we seek to raise awareness of its benefits, and the safeguards already in place to reduce waste, fraud, and abuse.

349. Currently, approximately 13.1 million households are enrolled in Lifeline, and USAC estimates a 32 percent participation rate. As occurred after the last major expansion of Lifeline, we can expect program participation to increase. We note, however, that the Commission has instituted many significant safeguards against waste, fraud, and abuse in the last five years and that some measures we adopt in this item today—such as the imposition of new minimum service standards that may result in higher subscriber out-of-pocket costs versus today's program—may depress demand for Lifeline services in the near term. For the purpose of establishing a budget for this program, we prepare for participation in the program to increase. A $2.25 billion budget would allow over 20 million households to participate in the program with basic support for an entire year before the budget is reached. We believe this budget establishes a ceiling with appropriate room for organic growth in the modernized, accountable Lifeline program we adopt today. (While some Lifeline subscribers will receive enhanced tribal support, it is difficult to forecast the number well in light of other changes that we make to the program).

350. *Reporting on Budget.* While we believe this budget level will provide ample room for new households to enroll in the program, we must also monitor the program and account for the reasons for growth in the program in order to make adjustments, if necessary. We therefore direct the Bureau to issue a report to the Commission by July 31 of the following year if total Lifeline disbursements exceeded 90 percent of the budget in the previous calendar year. For example, if in calendar year 2017, when the budget is set at $2.25 billion, the total disbursements for 2017 totaled $2 billion, equal to 90.9 percent of $2.25 billion, then by July 31, 2018 the Bureau would be required to issue such a report. This report should offer an evaluation of program disbursements, including the causes of program growth, an evaluation of the different services and technologies supported by Lifeline, disbursement amounts by state or other geographic areas, and any other information relevant to the Commission's necessary oversight of the Lifeline program. The report should also make recommendations about what should be done, for example, including making adjustments to the minimum service standards, changing the support levels, altering other requirements, or modifying the budget amount. We expect the full Commission will take appropriate action to address the Lifeline budget within six months of receiving the report.

351. *Indexing the Budget for Inflation.* The budget amount will be indexed to inflation in accordance with the Consumer Price Index for all items from the Department of Labor, Bureau of Labor Statistics. The budget for the next calendar year beginning January 1 shall be announced in a Public Notice on or before July 31 of each year.

H. Efficient Program Administration

1. Program Evaluation

352. In this Section, we clarify our goals and goal measurements to better align them with the modernized Lifeline program. We also direct the Bureau, working with USAC, to conduct a program evaluation of the newly reformed program so that the Commission and the public may have better information about the operation and effectiveness of the program.

353. *Discussion.* This order creates a revitalized broadband-centered Lifeline program. In light of these changes, we revise our program goals and call for evaluating the efficacy and efficiency of our newly revamped program in reaching its goals.

354. First, we explicitly include affordability of voice and broadband service as a component of our first and second program goals and separately measure progress towards that goal component. We clarify that the Lifeline program includes as its goal ensuring the affordability of voice and broadband service. We will measure progress toward this component of our first two goals by measuring the extent to which voice and broadband service expenditures exceed two percent of low-income consumers' disposable household income as compared to the next highest income group. (This approach is similar to the approach taken in other measures of affordability. We note that the United Nations set a goal for developing countries that, by 2015 "entry level" broadband Internet access should account for no more than 5% of disposable income. The most recent data from 2014 indicates that for the poorest 20 percent of U.S. households, a fixed broadband connection constitutes 2.47 percent of monthly disposable income while a 500MB month mobile broadband plan is 4.94 percent of disposable income). We direct the Bureau to implement the details of this measurement, examine the available data, and publish the results in the annual Universal Service Monitoring Report.

355. Second, we begin a thorough, long-term process of evaluating the newly revitalized Lifeline program. Within 12 months of **Federal Register** publication of this Order, we direct USAC to begin a procurement process for an outside, independent, third-party evaluator to complete a program evaluation of the Lifeline program's design, function, and administration. The evaluation should be consistent with current GAO guidance on program evaluations. If appropriate, the evaluation should discuss ways in which resources and data from other agencies can be helpful in evaluating the program. The outside evaluator must complete the evaluation and USAC must submit the findings to the Commission by December 31, 2020 so that the evaluation can be incorporated, as appropriate, into the State of the Lifeline Marketplace Report, due June 30, 2021. The Commission will make the final evaluation publicly available to the extent not otherwise precluded by law. We believe that an extended period until completion of the final report is necessary to evaluate whether the newly revised Lifeline program is operating efficiently and effectively in fulfillment of its goals.

356. Our direction here is consistent with prior direction given to USAC to undertake reviews of the extent to which our universal service rules, as implemented, are advancing relevant program goals. Because a key element of this forthcoming review will involve the evaluation of whether the implementation of the modified Lifeline rules is achieving our program goals, we follow a similar approach here. We also note that the efficacy of the legacy voice program has already been studied in depth by third parties, and therefore find that limited USF funds should be better spent designing and implementing, as soon as possible to enable a full analysis of a revamped program, an evaluation of the Lifeline program, which includes analysis of its effectiveness in meeting its newly revised goals.

2. Non-Usage Reforms

357. We next provide additional flexibility for those Lifeline subscribers and service providers who must demonstrate that the subscriber has used the service within the established time frame, while still maintaining fiscal responsibility. In the *2012 Lifeline Reform Order,* as a measure intended to reduce waste in the program, the

Commission introduced a requirement that a Lifeline service provider who did not assess and collect from its subscribers a charge (*e.g.*, a pre-paid provider) could not receive support for subscribers who had either not initiated service, or who had not used the service for a consecutive 60-day period. In this way, service providers would only receive support for eligible low-income subscribers who actually use the service. The Commission established ways in which a subscriber could establish "usage" for purposes of the rule.

358. In the *2015 Lifeline FNPRM,* we proposed to amend Section 54.407(c)(2) of our rules to allow the sending of a text message by a subscriber to constitute "usage." We recognized that, while text messaging was not a supported service, it is widely used by wireless consumers for their basic communications needs. Moreover, there was an indication that there is increasing reliance on text messaging by individuals who are deaf, hard of hearing, or have difficulty with speech. We also asked whether it was appropriate to base a subscriber's intention to use a supported service on that subscriber's use of a non-supported service. The *2015 Lifeline FNPRM* also sought comment on the conclusion not to allow the receipt of text messages to qualify as usage. Finally, the *2015 Lifeline FNPRM* proposed to reduce the non-usage interval from 60 to 30 days, as part of our ongoing efforts to reduce waste and inefficiency in the Lifeline program.

359. All those who commented on whether to allow the sending of text messages to constitute usage for purposes of Section 54.407(c)(2) of our rules supported this broadening of our requirements. Many commenters stated that for many of today's wireless consumers, including Lifeline subscribers, text messaging is the prevalent means of communication. Sprint, for example, stated that a significant percentage of Assurance Wireless customers used their Lifeline handset for text messaging even when they did not have any voice usage. Several commenters also highlighted that texting is the primary means by which many people with disabilities communicate.

360. Based on our review of the record and the communications landscape overall, we conclude that it is appropriate to allow the sending of a text message by the subscriber to qualify as "usage" for purposes of Section 54.407(c)(2). (This determination should not be confused with any decision regarding the regulatory status of texting service. Likewise, we make no decisions at this time regarding whether text messaging qualifies as a Lifeline-supported service). Our decision is based on the reality that many consumers today view texting, voice, and broadband as interchangeable means of communication and often use text messages as the sole or primary means of communication. Many Lifeline subscribers may assume that using any of the services available from the device provided by their Lifeline service provider will qualify as usage, and it seems unnecessarily burdensome to require them to distinguish among the services to ensure compliance with the program's usage requirement. While TracFone continues to urge the Commission to allow both the sending and receipt of texts to qualify as "usage," we conclude, consistent with the *2015 Lifeline FNPRM,* that only the sending of texts from the subscriber's device will qualify as sufficient indication of usage. We will, therefore, modify Section 54.407(c)(2) of our rules to reflect the inclusion of outbound texts as a means for establishing "usage." In addition, given this Order's inclusion of BIAS as a supported service, we also make certain modifications to § 54.407(c)(2)(i) and (ii) of our rules to account for the inclusion of broadband service as a supported service.

361. Broadening the list of services that can be used to demonstrate "usage" for purposes of Section 54.407(c)(2) of our rules should greatly ease consumers' ability to show their desire to retain Lifeline service. Consequently, we find it appropriate at this time to shorten the non-usage period from 60 to 30 days, along with a corresponding reduction in the time allotted for service providers to notify their subscribers of possible termination from 30 to 15 days. Under this scheme, Lifeline service providers must notify subscribers of possible termination on the 30th day and terminate service if, during the subsequent 15 days, the subscriber has not used the service. In this way, the subscriber will have a total of 45 days in which to demonstrate "usage." In making this determination, we are mindful of the concerns raised by commenters such as Sprint who assert that decreasing the time period may lead to a higher number of de-enrollments. We note, however, that such assessments are based on a scenario in which the Commission did not permit texting, one of the most prevalent means of wireless communications, to be used as a basis for demonstrating usage. Moreover, we expect that Lifeline service providers will educate their subscribers about the usage requirements and de-enrollment that will result from non-usage. Hence, we will modify Section 54.405(e)(3) of our rules to reflect the change in the non-usage interval. Finally, we emphasize that only if a carrier bills on a monthly basis and collects or makes a good faith effort to collect any money owned within a reasonable amount of time will the carrier not be subject to the non-usage requirements. Carriers that fail to take such steps and do not de-enroll subscribers pursuant to the non-usage requirements may be subject to enforcement action or withholding of support.

3. Rolling Recertification

362. In the *2015 Lifeline FNPRM,* we also sought comment on whether we should make any changes to the recertification process as we modernize the administration of the Lifeline program. We find that requiring Lifeline customers' eligibility to be recertified every 12 months, as measured from the subscriber's service initiation date, will result in administrative efficiencies and avoid imposing undue burdens on providers, USAC, or the National Verifier. Previously, Lifeline providers were required to annually recertify all subscribers except in states where the state Lifeline administrator or other state agency is responsible for recertification." Recertification was considered complete when a carrier had, by December 31, de-enrolled all subscribers who did not respond to recertification efforts.

363. We find that, particularly as the National Verifier is launched in multiple states, annually recertifying subscribers on a rolling basis, based on the subscriber's service initiation date, will prevent the entity responsible for recertification from processing recertification and potential de-enrollment procedures for all subscribers at the same time. This will make the recertification process more manageable and result in a recertification process that reflects the amount of time the subscriber has actually been enrolled in the Lifeline program. We also expect that this change will enable providers and the National Verifier to respond to any customers who need assistance in the recertification process without being overwhelmed by customer service requests.

364. Prior to the implementation of the National Verifier in a state, to prevent the enrollment of ineligible customers, we require providers to conduct an initial eligibility

determination for every enrolling customer, regardless of whether that customer had previously received Lifeline-discounted service from another provider. That provider must then recertify the customer's eligibility 12 months after the subscriber's service initiation date with that provider. However, after the National Verifier has been implemented in a state, the National Verifier's eligibility records for a subscriber will permit the National Verifier to only recertify the subscriber's eligibility every 12 months after the subscriber's first initiation of a Lifeline-discounted service. Thus, even if a subscriber changes Lifeline providers during the course of the year, the National Verifier will only need to recertify eligibility 12 months after the subscriber's first service initiation date, and every 12 months thereafter. We therefore revise Section 54.410(f) of our rules to reflect this change. The rules establishing and related to rolling recertification will be effective for all enrollments made beginning the later of January 1, 2017 or upon PRA approval. Subscribers enrolled on or after such date will be subject to recertification requirements at the end of the 12-month period that begins with their service initiation date. (Subscribers already enrolled prior to January 1, 2017 will be subject to rolling recertification based on their current service initiation date. We direct USAC to communicate with carriers and consumers as necessary to provide information on each subscriber's relevant date). For subscribers enrolled prior to January 1, 2017, recertification for 2016 will be conducted in accordance with current Lifeline practices and require recertification by December 31, 2016. Additionally for subscribers enrolled prior to January 1, 2017, rolling recertification will begin July 1, 2017. Beginning July 1, 2017, all subscribers enrolled prior to January 1, 2017 will need to be recertified on a rolling basis based on the subscriber's service initiation date. (We recognize that in this interim period subscribers will be recertified in a period ranging from six months to 18 months from the subscriber's last recertification. This interim period is required to effectively transition the program to rolling recertification. The period from January 1, 2017 to July 1, 2017 is meant to provide the appropriate transition for ETCs and subscribers, while preventing immediate recertification of subscribers with service initiation dates during those six months. Additionally, the transition to rolling recertification for existing subscribers needs to begin promptly to maintain program integrity and guard against improper payments).

365. We also revise Section 54.410(f) to clarify that the entity responsible for recertifying subscribers must first query the appropriate state or federal database to determinate on-going eligibility prior to using other means to recertify subscribers. In the *2012 Lifeline Reform Order*, the Commission specifically required "in instances where ongoing eligibility [could] not be determined through access to a qualifying database either by the ETC or the state," service providers could then recertify subscribers using other methods, including in person, in writing, by phone, by text message, by email or otherwise through the Internet to confirm continued eligibility." The revised recertification rules reflect the Commission's determination.

366. Further, we revise Section 54.405(e)(4) to require a subscriber be given 60 days to respond to recertification efforts, and consistent with our other de-enrollment rules, non-responsive subscribers will be de-enrolled within five days following the expiration of the 60-day response window. We take this step to ease the recertification burden for providers and the National Verifier. Expanding the recertification period will allow batching of daily subscriber recertification deadlines into more manageable weekly or monthly groupings.

367. Finally, we revise Section 54.405(e)(1) to require de-enrollment within five business days after the expiration of the subscriber's time to demonstrate eligibility. In so doing, we add consistency to the various provisions in Section 54.405 related to de-enrollment due to ineligibility. We also adopt Section 54.405(e)(5) to require service providers to de-enroll a subscriber who has requested de-enrollment within two business days after making such a request. We take this action to ensure that subscriber de-enrollment requests are resolved in a timely manner.

4. Publishing Lifeline Subscriber Counts

368. *Discussion.* We direct USAC before December 1, 2016 to modify its online Lifeline tool to make available to the public information about the Lifeline program, such as the total number of subscribers for which a provider seeks support for each SAC, including how many subscribers are receiving enhanced Tribal support. Although the public can already derive the Lifeline subscriber counts by referencing information from USAC's Web site and Quarterly Reports, relatively simple changes to USAC's systems can make this and other information about the Lifeline program far easier to access. Moreover, having USAC directly publish subscriber counts increases transparency and continues to promote accountability in the program. USAC shall also make available information about the number of subscribers receiving support for each of the supported services. Commenters also agree that publishing the amount of subscribers served by providers will increase transparency.

369. We direct USAC to work with the Bureau and OMD to formulate a plan for making available additional Lifeline information consistent with the Commission's historical commitment to transparency as well as taking into consideration any valid concerns about divulging non-public information. USAC should consider how other useful information can be made publically available, such as by using the National Verifier. In addition, we direct USAC to consider new ways in which states or other government entities may be given increased access to the National Verifier or NLAD for the purposes of better program administration. Before giving such access, USAC should obtain approval from the Bureau.

5. Audits

370. In this Section, we adopt our proposal to revise Section 54.420 of our rules requiring all Lifeline providers to undergo an audit within their first year of receiving Lifeline disbursements. Adopting the revised Section 54.420 will allow the Commission flexibility to determine the appropriate and most cost effective time to audit entities that are new providers in the Lifeline program.

371. *Discussion.* We now modify our rule to delegate to OMD, in its role overseeing the USF audit programs, to work with USAC to identify those audits of first-year Lifeline providers that will be conducted within the one-year deadline and those that will be audited after the one-year deadline. Given the three years of experience auditing these carriers, we have found that many new providers have not yet had a sufficient number of subscribers to draw conclusions regarding compliance with the program rules. To be clear, this approach is a strengthening of the audit process because it will allow USAC to more efficiently direct audit resources to audit providers that have a higher risk of non-compliance and/or receive a larger percentage of the total Lifeline program disbursements, rather than being required to conduct audits that may be of little practical value. Further,

we do not expect such audit flexibility to result in these entities not being audited, and we delegate to OMD, working with USAC, to determine the most cost-effective time to audit an entity when it has sufficient data to conduct a meaningful audit, to provide OMD with recommendations on which first-year service providers would be cost effective to audit after their first year, and which service providers should be audited after their first year. We direct USAC to provide all first-year service providers notice within 30 days of their one-year deadline regarding whether the audit will or will not be conducted.

372. We also believe that the overall audit program should include a check on whether the service was provided and whether the service provided met the standards articulated in this Order. We delegate to OMD working with USAC to include such performance auditing in its overall audit plan. We view our audit program as a key factor in promoting program integrity and direct USAC working with OMD to continue to improve and focus the overall program on providers for whom the risk of non-compliance is high and whose non-compliance would have a large impact on the overall fund.

6. Universal Consumer Certification, Recertification, and Household Worksheet Forms

373. In this Section we delegate to the Bureau to create uniform, standardized Lifeline forms approved by the Office of Management and Budget (OMB) for all subscribers receiving a federal Lifeline benefit, if it believes that doing so will aid program administration.

374. *Discussion.* In this Order, we delegate to the Bureau to propose to OMB Lifeline forms for certification, recertification and the one-per-household requirement, if it believes that doing so will aid program administration. (We also delegate to the Bureau the ability to phase out and/or combine forms as needed. With implementation of the National Verifier, many forms may need to be adjusted, phased-out, or combined). We revise Section 54.410 to reflect the use of certification and recertification forms, and one-per-household worksheets for the Lifeline program, if such forms are implemented. (Our revisions to the rule recognize that certification and recertification forms and one-per-household worksheets are used by entities enrolling subscribers. Currently, such forms are developed by service providers and must include the items required by Section 54.410 and the *2012 Lifeline FNPRM*). We believe that the enormous benefits to the program, such as increased understanding and compliance by both subscribers and providers, outweigh any concerns with the standardized approach. (While we create federal forms by this order, states are free to require subscribers to complete additional state forms to assist with state programs). If the Bureau moves forward on uniform forms, it may use the forms that we sought comment on, displayed on USAC's Web site, as such forms contain the information on eligibility and certification, the one-per-household requirement, the obligations of the subscriber, that should be included at a minimum on these Lifeline forms. We will continue to require that subscribers sign the forms under penalty of perjury, regardless of whether they are forms created by the service providers or by the Bureau. However, we expect that if the Bureau adopts forms, any such forms will explain the meaning and import of those terms to the subscriber and the consequences of providing false and misleading information. We expect that the above-mentioned concepts will be contained in any Bureau form and we delegate to the Bureau the ability to create wording and formatting that is easily understood by the consumer and improves program compliance, if it chooses to adopt such forms. We also delegate to the Bureau to amend the forms as necessary as changes in the program are made, such as the deployment of the National Verifier. (Once deployed, we direct the National Verifier to adapt the OMB-approved forms to the methods available to consumers to contact the National Verifier, such as paper and electronic versions). Recognizing that there may continue to be relevant program differences across states and territories, we direct the Bureau to account for such differences in any standardized forms, as necessary. In this way, we seek to be responsive to some concerns that a uniform approach may not fit every situation. We expect that, if the Bureau creates standardized forms, the forms will be responsive to evolving program needs and that the Bureau can and should propose changes to OMB as needed.

I. Delegation to the Bureau

375. Given the complexities associated with modifying existing rules as well as other reforms adopted in this Order, we delegate authority to the Wireline Competition Bureau to make any further rule revisions as necessary to ensure the reforms adopted in this Order are reflected in the rules. This includes correcting any conflicts between the rules and this Order. If any such rule changes are warranted, the Bureau shall be responsible for such change, but in no event shall such change create new or different policy than that articulated by this Order. We note that any entity that disagrees with a rule change made on delegated authority will have the opportunity to file an Application for Review by the full Commission.

IV. Further Report and Order

376. In the *Map Implementation Order,* released on February 2, 2016, the Wireline Competition Bureau (Bureau) granted a request for extension of time for the implementation of the Oklahoma Historical Map until June 8, 2016, in order to complete the consultation process with Tribal leaders and allow providers time to implement the map and appropriately notify customers. In the *Map Implementation Order,* the Bureau specifically emphasized the need to further discuss the status of the Cherokee Outlet, and whether it should remain as a "former reservation in Oklahoma" for purposes of the Lifeline Program. The Bureau also released a shapefile containing the boundaries of the Cherokee Outlet in order to give potentially affected parties advance notice of any potential changes. After completing consultations, and upon recommendation from the Bureau as required by the *2015 Lifeline FNPRM,* we are convinced that the Cherokee Outlet, due to its long history of usage by the Cherokee Nation, is properly defined as a "former reservation in Oklahoma" for our purposes of defining areas eligible for enhanced Lifeline support. Accordingly, residents of the Cherokee Outlet will remain eligible for enhanced Tribal support. The Oklahoma Historical Map will become effective on June 8, 2016.

V. Order On Reconsideration

377. In this Section, we grant petitions filed by GCI, USTelecom, TracFone and Sprint asking that we reconsider three rules, adopted in the *2012 Lifeline Reform Order,* related to the reporting of temporary addresses. These rules were put in place to ensure that the often mobile Lifeline population can obtain service while protecting the fund against waste, fraud and abuse from duplicative support. However, based on our experience, we find that the burden of these rules outweighs any countervailing benefit. Existing measures, including the robust identify verification and checks for duplicative support already built into the NLAD that do not rely on the temporary address rules, as well as the

actions we take in this order, including the establishment of the National Verifier, provide adequate protections against waste and abuse in the absence of the temporary address rules. While Lifeline providers may still enroll eligible subscribers using a temporary address, those subscribers will no longer be required to certify to the temporary address every 90 days and those providers will no longer be required recertify the temporary address every 90 days. (We note that this temporary address recertification process is separate from subscriber recertification of program or income eligibility).

378. *Discussion.* On reconsideration, we now eliminate § 54.410(g) and (d)(3)(v) and the portion of Section 54.405(e)(4) related to temporary addresses. As explained by the parties seeking reconsideration of this rule, we conclude that these rules impose a burden on providers without a significant benefit. While these rules were put in place to prevent possible waste, fraud and abuse from customers representing a "small portion of an ETC's Lifeline subscriber base," experience has shown that, in fact, the other subscriber data (*e.g.* address at time of application, name, last four digits of social security number and date of birth) collected by USAC has been sufficient to verify subscriber's identity and check for duplicative support. Additional protections put in place in this order, including the establishment of a National Verifier, further reduce the need for these rules. As explained elsewhere in this order, we conclude that the elimination of unnecessary and burdensome requirements will increase the incentive and likelihood of additional providers entering the Lifeline marketplace. We therefore conclude that elimination of these rules is in the public interest. We will, however, continue to require subscribers to indicate on their certification forms whether the address is permanent or temporary. We find that this requirement assists the Commission and USAC by providing important demographic information about the Lifeline subscriber-base. (USAC data indicates that, as of March 2016, almost 6 percent (or approximately 700,000) of Lifeline subscribers in the NLAD) have temporary addresses, underscoring the critical benefit that Lifeline provides to the most vulnerable Americans).

VI. Severability

379. All of the Lifeline rules that are adopted in this Order are designed to work in unison to make telecommunications services more affordable to low-income households and to strengthen the efficiency and integrity of the program's administration. However, each of the separate Lifeline reforms we undertake in this Order serve a particular function toward those goals. Therefore, it is our intent that each of the rules adopted herein shall be severable. If any of the rules is declared invalid or unenforceable for any reason, it is our intent that the remaining rules shall remain in full force and effect.

VII. Procedural Matters

A. Final Regulatory Flexibility Analysis

380. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Third Report and Order, Further Report and Order, and Order on Reconsideration. The FRFA is set forth in in section VII.D of this document.

B. Paperwork Reduction Act Analysis

381. This Third Report and Order, Further Report and Order, and Order on Reconsideration contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

C. Congressional Review Act

382. The Commission will include a copy of this Third Report and Order, Further Report and Order, and Order on Reconsideration in a report to be sent to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

D. Final Regulatory Flexibility Analysis

383. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Lifeline Second FNPRM* in WC Docket Nos. 11–42, 09–197, 10–90. The Commission sought written public comment on the proposals in the *Lifeline Second FNPRM,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Final Rules

384. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254. The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Since the 2012 *Lifeline Reform Order,* the Commission has aggressively addressed waste, fraud and abuse in the Lifeline program and improved program administration and accountability. In this Third Report and Order, Further Report and Order, and Order on Reconsideration (Order), we recognize the importance of broadband access in today's world. Those who have access use the Internet to, among other things, connect with family, work, and friends, stay abreast of the news, monitor important civic activities, research issues, stay in contact with healthcare providers. However, not all American can access the Internet and enjoy the benefits of broadband access in today's society. In this Order, we therefore take measures to reform the Lifeline program to become part of the solution to the Nation's broadband affordability challenge by focusing the Lifeline program on broadband and encouraging broadband providers to offer supported broadband services that meet specific Commission established standards. We also take steps to improve the management and design of the Lifeline program by streamlining program rules and eliminating outdated obligations with the goal of providing incentives for broadband providers to participate and increasing meaningful broadband offerings to Lifeline subscribers.

385. Specifically, in this Order, to create a competitive Lifeline broadband program, we take a variety of actions to encourage more Lifeline providers to deliver supported broadband services. Most significantly, we allow support for robust, standalone fixed and mobile broadband services to ensure meaningful levels of connectivity. At the same time, we transition the Lifeline program from primarily supporting voice services to targeting support at

modern broadband services. Additionally, to encourage entry of new Lifeline providers to supply broadband, we create a streamlined Lifeline Broadband Provider designation process, and modernize the obligations of broadband providers by reinterpreting parts of the statute and granting providers forbearance from parts of the statute in order to ensure just and reasonable rates and the protection of consumers.

386. Additionally, in order to ensure that the Lifeline program is designed to operate in an efficient, and highly accountable manner with the reorientation of the Lifeline program to broadband, we take a number of additional actions in this Order to reform the program. Most significantly, we set minimum service standards for broadband and mobile services to ensure those services meet the needs of consumers; create a National Lifeline Eligibility Verifier (National Verifier) to transfer the responsibility of making eligibility determinations away from Lifeline providers and remove the opportunities for Lifeline providers to inappropriately enroll subscribers; streamline the criteria for Lifeline program qualification in recognition of the way the vast majority of Lifeline subscribers gain entry to the program; require Lifeline providers to make available Wi-Fi enabled devices and hotspot capable devices when providing devices for use with Lifeline-supported service; and adopt a budget for the Lifeline program to bring the Lifeline program in to alignment with the other three universal service fund programs, each of which operates within a budget, and to ensure that the program is designed to operate in an efficient, highly accountable manner. We also take several other measures to improve the efficient administration and accountability of the Lifeline program, such as establishing an annual eligibility process, imposing a port freeze on Lifeline services, revising the audit procedures, and creating standardized Lifeline forms. We believe that these new rules and reforms, taken together, will greatly expand the reach of the Lifeline program to all consumers and further increase utilization of the Lifeline program.

2. Summary of Significant Issues Raised by Public Comments to the IRFA

387. We received one comment specifically addressing the IRFA from the Small Carriers Coalition (Coalition). In the 2015 *Lifeline Second FNPRM,* in order to increase eligible telecommunications carrier (ETC) accountability and compliance with the Lifeline rules, we proposed a requirement that all company employees and third-party agents interfacing with customers receive sufficient training on the Lifeline rules, and that such persons receive training annually. The Coalition notes that the Commission's analysis of the compliance burden of this requirement on small entities was insufficient. Specifically, the Coalition asserts that, while the burden of executing a certification that appropriate training has been received may be minor, the burden of arranging and paying for such training, and requiring employees and agents to undergo such training, is much higher. The Coalition asserts that the burden of arranging and paying for such training was not addressed as well as the burden of requiring a 24-hour customer service call center requirement for the sole purpose of de-enrolling Lifeline customers. The Coalition recommends that the training requirement be eliminated, or, if retained for small carriers, reduced such that only one supervisory employee be required to undergo training. The Coalition asserts that, by tailoring this requirement, it would more closely align the burden of training with the limited public interest benefit of requiring training for carriers with few Lifeline customers. The Coalition also recommends that the 24-hour customer service requirement not be applied to small carriers, because such requirement dwarfs the potential public interest benefit.

388. In this Order, we do not adopt this proposal as a final rule. We recognize the additional compliance burden and cost imposed upon small entities of this requirement. As an alternative measure to increase eligible telecommunications carrier (ETC) accountability and compliance with the Lifeline rules, in this Order, we have established the National Verifier with its primary function being to verify customer eligibility for Lifeline support. The National Verifier will also perform a variety of other functions necessary to enroll eligible subscribers into the Lifeline program, such as, but not limited to, enabling access by authorized users, providing support payments to providers, and conducting recertification of subscribers, to add to the efficient administration of the Lifeline program. Additionally, we have streamlined eligibility for Lifeline support to increase efficiency and improve the program for consumers, Lifeline providers, and other participants. By relying on highly accountable programs that demonstrate limited eligibility fraud, we will reduce the potential of waste, fraud, and abuse occurring due to eligibility errors. These alternative measures therefore will help ensure compliance with the Commission's rules and reduce the potential risk for error when interfacing with customers while at the same time limiting any additional burden upon small businesses.

3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

389. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

390. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

4. Description and Estimate of the Number of Small Entities to Which the Final May Apply

391. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

392. *Small Entities, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. As of 2014, according to the SBA, there were 28.2 million small businesses in the U.S., which represented 99.7 percent of all businesses in the United States.

Additionally, a "small organization is generally any not-for-profit enterprise which is independently owned and operated and not dominant in its field". Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand". Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 89,327 entities may qualify as "small governmental jurisdictions". Thus, we estimate that most local governmental jurisdictions are small.

a. Wireline Providers

393. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had employment of 1,000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.

394. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate category for this service is the category Wired Telecommunications Carriers. Under the category of Wired Telecommunications Carriers, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers, seventy of which have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

395. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate category for Interexchange Carriers is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

396. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate category for Operator Service Providers is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of the total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these interexchange carriers can be considered small entities. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

397. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

398. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities.

According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

399. *Pre-paid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for pre-paid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these pre-paid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of pre-paid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of pre-paid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

400. *800 and 800-Like Service Subscribers.* (We include all toll-free number subscribers in this category, including those for 888 numbers.) Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate category for these services is the category Telecommunications Resellers. Under that category and corresponding size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers. We do not believe 800 and 800-Like Service Subscribers will be affected by our proposed rules, however we choose to include this category and seek comment on whether there will be an effect on small entities within this category.

b. Wireless Carriers and Service Providers

401. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. (Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "100 employees or more."). Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

402. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

403. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. The second has a size standard of $32.5 million or less in annual receipts.

404. The category of *Satellite Telecommunications* "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

405. The second category, *i.e.* "All Other Telecommunications" comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications

connections are also included in this industry." The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with gross annual receipts of $ 32.5 million or less. For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49, 999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

406. *Common Carrier Paging.* As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite).

407. In addition, in the Paging *Second Report and Order,* the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An initial auction of Metropolitan Economic Area ("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.

408. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 291 carriers reported that they were engaged in the provision of "paging and messaging" services. Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees. We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

409. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the 2010 Trends Report, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. We have estimated that 261 of these are small under the SBA small business size standard.

c. Internet Service Providers

410. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $32.5 million or less.

5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

411. A number of our rule changes will result in additional reporting, recordkeeping, or compliance requirements for small entities. For all of those rule changes, we have determined that the benefit the rule change will bring for the Lifeline program outweighs the burden of the increased requirement/s. Other rule changes decrease reporting, recordkeeping, or compliance requirements for small entities. We have noted the applicable rule changes below impacting small entities.

a. Increase in Projected Reporting, Recordkeeping and Other Compliance Requirements

412. *Compliance burdens.* All of the rules we implement impose some compliance burdens on small entities by requiring them to become familiar with the new rules to comply with them. For several of the new rules, such as the new budget and the revised audit procedures, the burden of becoming familiar with the new rule in order to comply with it is the only additional burden the rule imposes.

413. *Broadband as a Supported Service.* Expanding the Lifeline program to support broadband Internet access service (BIAS) at a discounted rate by Lifeline providers will increase recordkeeping and compliance burdens for small entities since they will now be required to revise their business plans and make any necessary IT changes to account for the delivery of broadband services and the gradual reduction in monthly support for voice-only service. Additionally, small entities seeking designation as a Lifeline Broadband Provider will also be subject to additional reporting and compliance requirements, such as submitting information describing the terms and conditions of any BIAS plans offered to Lifeline subscribers. However, the benefit of providing a robust, affordable broadband service offering to low-income consumers who may not otherwise be able to afford and utilize the service outweighs any additional recordkeeping or compliance obligations upon small businesses. Moreover, an overwhelming majority of commenters support the inclusion of broadband in the Lifeline program as broadband access is of critical importance for consumers of all incomes.

414. *Minimum Service Standards.* Requiring broadband providers claiming Lifeline support to certify compliance with the minimum service standards and making them subject to the Commission's audit authority increases recordkeeping, reporting, and compliance requirements for those fixed broadband providers claiming Lifeline support. These certification and compliance requirements are necessary, however, in order to ensure that Lifeline customers obtain the type of robust service which is essential to participate in today's society. Additionally, these standards ensure that service offerings will be affordable for small entities.

415. *Wi-Fi Enabled Devices.* Requiring Lifeline providers who make devices available with or without charge for use with a Lifeline-supported fixed or mobile broadband service to ensure that all such devices are Wi-Fi enabled, and requiring Lifeline providers who make devices available with or without charge for use with a Lifeline-supported mobile broadband service to also offer devices that are capable of being used as a hotspot, will increase the compliance and reporting burdens upon small businesses. This requirement will require businesses to offer certain products that they may not have otherwise provided to consumers and

certify to such compliance consistent with our rules. Conditioning support for Lifeline services in this way, however, will increase the value of the supported connection so that Lifeline consumers can regularly and reliably access the Internet. Additionally, in order to reduce the immediate burden upon small businesses, we have provided for a transition period for complying with this requirement.

416. *De-enrollment.* In revising our rules regarding de-enrollment to add consistency and clarity, we now require de-enrollment within five business days after the expiration of the subscriber's time to demonstrate eligibility. This change may increase the compliance burden on small entities where previously their systems did not have to track the timeframe for de-enrollment. This burden, however, is outweighed by the benefit this rule change will bring to the Lifeline program by ensuring that subscriber de-enrollment requests are resolved on a timely basis.

b. Decrease in Projected Reporting, Recordkeeping and Other Compliance Requirements

417. *Annual Recertification.* Requiring Lifeline providers to annually recertify all subscribers on a rolling basis, based on the subscriber's date of enrollments, decreases the burden of the recordkeeping requirement for small businesses by eliminating the need to process recertification and potential de-enrollment procedures for all subscribers at the same time. Thus, making the recertification process more manageable for small businesses and enable providers (and the National Verifier) to respond to any customers who need assistance in the recertification process without being overwhelmed by customer service requests.

418. *Eliminating the Reporting of Temporary Addresses.* Eliminating certain sections of the Commission's rules related to requiring service providers to recertify the temporary addresses of their subscribers will reduce reporting and recordkeeping burden upon small entities. The elimination of these unnecessary and burdensome requirements should also increase the incentive and likelihood of additional small businesses entering the Lifeline marketplace.

419. *National Lifeline Eligibility Verifier.* The establishment of a National Verifier to make eligibility determinations and perform a variety of other functions necessary to enroll eligible subscribers into the Lifeline Program will lessen the recordkeeping and compliance burden on small entities by relieving them of the obligation to conduct eligibility determinations. Further, the establishment of the National Verifier will, among other things, help to not only lower costs to the Fund but also to Lifeline providers, including small businesses, through increasing administrative efficiencies.

420. *Streamlining Lifeline Eligibility.* Streamlining eligibility for Lifeline support by eliminating certain programs from the default federal assistance eligibility and removing income-based eligibility and state-specified eligibility criteria as avenues to access Lifeline support will reduce the recordkeeping burden upon small entities to make eligibility determinations, and increase efficiency and improve the Lifeline program for not only consumers but also providers.

421. *Program Audits.* Allowing the Office of Managing Director (OMD) to determine if a Lifeline provider should be audited within the first year of receiving Lifeline benefits in the state in which it was granted ETC status, rather than requiring all first-year Lifeline providers to undergo an audit within the first year of receiving Lifeline benefits, will minimize the burden on a substantial number of small entities within the first year of receiving Lifeline benefits to respond to requests for information as part of an audit. This requirement, while reducing the number of audits conducted within the first year of receiving Lifeline benefits, nonetheless, is essential in promoting program integrity and ensuring compliance with the Commission's rules.

422. *Universal FCC Forms.* The implementation of standardized FCC Forms that all ETCs, where applicable, must use in order to certify a consumers' eligibility for Lifeline benefits and the one-per-household requirements should decrease recordkeeping and compliance burdens upon small entities by having the Commission develop Lifeline forms for the use by providers and subscribers. Ultimately, this standardized approach will increase overall compliance with the Commission's rules and facilitate administration of the Lifeline program.

6. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

423. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

424. This rulemaking could impose minimal additional burdens on small entities. We considered alternatives to the rulemaking changes that increase projected reporting, recordkeeping and other compliance requirements for small entities.

a. Alternatives Permitted

425. *Lifeline Obligations for ETCs (Lifeline Voice Service Obligation).* We grant a conditional forbearance from the Lifeline voice service obligation for existing ETCs that are not Lifeline-only ETCs.

426. *Lifeline Obligations for ETCs (Lifeline Broadband Service Obligation).* We also grant a forbearance to Lifeline-only ETCs from the requirement to offer BIAS to allow such ETCS to solely offer voice service. Further, we grant a forbearance to ETCs that are not Lifeline-only from the requirement to offer Lifeline-BIAS to allow such ETCs to solely offer voice service in the Lifeline program.

427. While the above forbearances could have a significant impact on small entities insofar as it would make this conditional forbearance theoretically available to many small entities (all rate-of-return incumbent local exchange carriers (ILECs), for instance), it would be a benefit to small entities, not a burden. However, it is unclear how many small entities (vs. large entities like price cap ILECs) actually will take advantage of the forbearances provided.

b. Alternatives Considered and Rejected

428. *Minimum service standards (Fixed Broadband).* The best source of subscriber data to obtain minimum service standards for fixed broadband is the FCC Form 477. Although there were other proposed methods provided by commenters, such as specific numeric thresholds and existing Commission testing mechanisms, providers are already required to report extensively on their offerings on the FCC Form 477 twice a year; therefore, it is the less burdensome method to acquire data to set and regularly update the minimum service standards for fixed broadband speeds.

429. *Minimum service standards (Mobile Broadband).* The best source of data to set and update minimum service standards for mobile broadband data usage is data set forth in the Commission's annual *Mobile Competition Report.* Although a commenter proposed a method utilizing a numeric threshold, this report is updated annually with mobile subscriber data; therefore, it is the less burdensome method to calculate and regularly update the mobile data usage level for mobile broadband standards.

430. **Report to Congress:** The Commission will send a copy of this Third Report and Order, Further Report and Order, and Order on Reconsideration, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA. In addition, the Commission will send a copy of this Third Report and Order, Further Report and Order, and Order on Reconsideration, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Third Report and Order, Further Report and Order, and Order on Reconsideration, and the FRFA (or summaries thereof) will also be published in the **Federal Register**.

VIII. Ordering Clauses

431. *Accordingly, it is ordered,* that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302, this Third Report and Order, Further Report and Order, and Order on Reconsideration *is adopted* effective June 23, 2016, except to the extent provided herein and expressly addressed below.

432. *It is further ordered,* that pursuant to the authority contained in Sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302, part 54 of the Commission's rules, 47 CFR part 54, is *amended,* and such rule amendments to Sections 54.201, 54.400, and 54.423 shall be effective 30 days after announcement in the **Federal Register** of OMB approval of the subject information collection requirements or December 1, 2016, whichever is later.

433. *It is further ordered* that, pursuant to the authority contained in Sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302, part 54 of the Commission's rules, 47 CFR part 54, that the rule amendments to Sections 54.202(a)(6), (d), and (e) and 54.205(c) are subject to the PRA and will become effective immediately upon announcement in the **Federal Register** of OMB approval of the subject information collection requirements.

434. *It is further ordered* that, pursuant to the authority contained in Sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302, part 54 of the Commission's rules, 47 CFR part 54, that the rule amendments to §§ 54.101, 54.401(a)(2), (b), (c), and (f), 54.403(a), 54.405(e)(1) and (e)(3) through (5), 54.407(a), (c)(2), and (d), 54.408, 54.409(a)(2), 54.410(b) through (e) and (g) through (h), 54.411, 54.416(a)(3), 54.420(b), and 54.422(b)(3) are subject to the PRA and will become effective 60 days after announcement in the **Federal Register** of OMB approval of the subject information collection requirements or December 1, 2016, whichever is later.

435. *It is further ordered* that, pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302, part 54 of the Commission's rules, 47 CFR part 54, that the rule amendment to § 54.410(f) is subject to the PRA and will become effective 60 days after announcement in the **Federal Register** of OMB approval of the subject information collection requirements or January 1, 2017, whichever is later.

436. *It is further ordered* that, pursuant to the authority contained in Sections 1 through 5 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 155 and 254, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petitions for Reconsideration filed by GCI on April 2, 2012, Sprint Nextel on April 2, 2012, and the Petitions for Reconsideration and Clarification filed by TracFone on April 2, 2012 and USTelecom on April 2, 2012 *are granted.*

437. *It is further ordered* that the Commission *shall send* a copy of this Third Report and Order, Further Report and Order and Order on Reconsideration to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

438. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Third Report and Order, Further Report and Order, and Order on Reconsideration, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: Section 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Revise § 54.101 to read as follows:

§ 54.101 Supported services for rural, insular and high cost areas.

(a) *Services designated for support.* Voice telephony services and broadband service shall be supported by federal universal service support mechanisms.

(1) Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll

limitation services to qualifying low-income consumers as provided in subpart E of this part.

(2) Eligible broadband Internet access services must provide the capability to transmit data to and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.

(b) An eligible telecommunications carrier eligible to receive high-cost support must offer voice telephony service as set forth in paragraph (a)(1) of this section in order to receive federal universal service support.

(c) An eligible telecommunications carrier (ETC) subject to a high-cost public interest obligation to offer broadband Internet access services and not receiving Phase I frozen high-cost support must offer broadband services as set forth in paragraph (a)(2) of this section within the areas where it receives high-cost support consistent with the obligations set forth in this part and subparts D, K, L and M of this part.

(d) Any ETC must comply with subpart E of this part.

■ 3. Amend § 54.201 by adding paragraph (j) to read as follows:

§ 54.201 Definition of eligible telecommunications carriers, generally.

* * * * *

(j) A state commission shall not designate a common carrier as a Lifeline Broadband Provider eligible telecommunications carrier.

■ 4. Amend § 54.202 by adding paragraph (a)(6) and adding paragraphs (d) and (e) to read as follows:

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

(a) * * *

(6) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, submit information describing the terms and conditions of any broadband Internet access service plans offered to Lifeline subscribers, including details on the speeds offered, data usage allotments, additional charges for particular uses, if any, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.

* * * * *

(d) A common carrier seeking designation as a Lifeline Broadband Provider eligible telecommunications carrier must meet the requirements of paragraph (a) of this section. The Commission should process such petitions for designation as follows:

(1) If the petitioning common carrier has offered broadband Internet access service to the public for at least two years before the date of the filing and serves at least 1,000 non-Lifeline customers with voice telephony and/or broadband Internet access service as of the date of the filing, the common carrier's petition for designation as a Lifeline Broadband Provider eligible telecommunications carrier shall be deemed granted within 60 days of the submission of a completed filing unless the Commission notifies the common carrier that the grant will not be automatically effective.

(2) If the petitioning common carrier provides service on Tribal lands and is a facilities-based provider more than 50 percent owned by one or more federally recognized Tribal Nations or Tribal consortia and actually controlled by one or more federally recognized Tribal Nations or Tribal consortia, the common carrier's petition for designation as a Lifeline Broadband Provider eligible telecommunications carrier shall be deemed granted within 60 days of the submission of a completed filing unless the Commission notifies the common carrier that the grant will not be automatically effective.

(3) If the petitioning common carrier does not qualify under paragraph (d)(1) or (2) of this section, the common carrier's petition for designation as a Lifeline Broadband Provider eligible telecommunications carrier shall be acted upon within six months of the submission of a completed filing.

(e) A provider designated as a Lifeline Broadband Provider (LBP) may obtain designation as an LBP in additional service areas by submitting to the Commission a request identifying the service areas in which the LBP plans to offer Lifeline-supported service and a certification that there has been no material change to the information submitted in the petition for which the LBP received designation as an LBP. Such a request shall be deemed granted five business days after it is submitted to the Commission, unless the Commission notifies the applicant that the grant will not be automatically effective.

■ 5. Amend § 54.205 by adding paragraph (c) as follows:

§ 54.205 Relinquishment of universal service.

* * * * *

(c) In the case of a Lifeline Broadband Provider eligible telecommunications carrier, a Lifeline Broadband Provider's notice of relinquishment shall be deemed granted by the Commission 60 days after the notice is filed, unless the Commission notifies the Lifeline Broadband Provider that the relinquishment will not be automatically effective. This paragraph (c) shall not apply to Lifeline Broadband Providers that also receive high-cost universal service support.

■ 6. Amend § 54.400 by revising paragraphs (f) and (j) and adding paragraphs (l) through (o) to read as follows:

§ 54.400 Terms and definitions.

* * * * *

(f) *Income.* "Income" means gross income as defined under section 61 of the Internal Revenue Code, 26 U.S.C. 61, for all members of the household. This means all income actually received by all members of the household from whatever source derived, unless specifically excluded by the Internal Revenue Code, Part III of Title 26, 26 U.S.C. 101 *et seq.*

* * * * *

(j) *Qualifying assistance program.* A "qualifying assistance program" means any of the federal or Tribal assistance programs the participation in which, pursuant to § 54.409(a) or (b), qualifies a consumer for Lifeline service, including Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; Veterans and Survivors Pension Benefit; Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families (Tribal TANF); Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR).

* * * * *

(l) *Broadband Internet access service.* "Broadband Internet access service" is defined as a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.

(m) *Voice telephony service.* "Voice telephony service" is defined as voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

(n) *Supported services.* Voice Telephony services and broadband Internet access services are supported services for the Lifeline program.

(o) *National Lifeline Eligibility Verifier.* The "National Lifeline Eligibility Verifier" or "National Verifier" is an electronic and manual system with associated functions, processes, policies and procedures, to facilitate the determination of consumer eligibility for the Lifeline program, as directed by the Commission.

■ 7. Amend § 54.401 by revising paragraphs (a)(2) and (b) and paragraph (c) introductory text and adding paragraph (f) to read as follows:

§ 54.401 Lifeline defined.

(a) * * *

(2) That provides qualifying low-income consumers with voice telephony service or broadband Internet access service as defined in § 54.400. Toll limitation service does not need to be offered for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of the service. If an eligible telecommunications carrier charges Lifeline subscribers a fee for toll calls that is in addition to the per month or per billing cycle price of the subscribers' Lifeline service, the carrier must offer toll limitation service at no charge to its subscribers as part of its Lifeline service offering.

(b) Eligible telecommunications carriers may allow qualifying low-income consumers to apply Lifeline discounts to any residential service plan with the minimum service levels set forth in § 54.408 that includes fixed or mobile voice telephony service, broadband Internet access service, or a bundle of broadband Internet access service and fixed or mobile voice telephony service; and plans that include optional calling features such as, but not limited to, caller identification, call waiting, voicemail, and three-way calling.

(1) Eligible telecommunications carriers may permit qualifying low-income consumers to apply their Lifeline discount to family shared data plans.

(2) Eligible telecommunications carriers may allow qualifying low-income consumers to apply Lifeline discounts to any residential service plan that includes voice telephony service without qualifying broadband Internet access service prior to December 1, 2021.

(3) Beginning December 1, 2016, eligible telecommunications carriers must provide the minimum service levels for each offering of mobile voice service as defined in § 54.408.

(4) Beginning December 1, 2021, eligible telecommunications carriers must provide the minimum service levels for broadband Internet access service in every Lifeline offering.

(c) Eligible telecommunications carriers may not collect a service deposit in order to initiate Lifeline for voice-only service plans that:

* * * * *

(f) Eligible telecommunications carriers may aggregate eligible subscribers' benefits to provide a collective service to a group of subscribers, provided that each qualifying low-income consumer subscribed to the collective service receives residential service that meets the requirements of paragraph (a) of this section and § 54.408.

■ 8. Amend § 54.403 by revising paragraph (a)(1), redesignating paragraph (a)(2) as paragraph (a)(3), adding a new paragraph (a)(2), removing and reserving paragraph (b)(2), and removing paragraph (c) to read as follows:

§ 54.403 Lifeline support amount.

(a) * * *

(1) *Basic support amount.* Federal Lifeline support in the amount of $9.25 per month will be made available to an eligible telecommunications carrier providing Lifeline service to a qualifying low-income consumer, except as provided in paragraph (a)(2) of this section, if that carrier certifies to the Administrator that it will pass through the full amount of support to the qualifying low-income consumer and that it has received any non-federal regulatory approvals necessary to implement the rate reduction.

(2) For a Lifeline provider offering either standalone voice service, subject to the minimum service standards set forth in § 54.408, or voice service with broadband below the minimum standards set forth in § 54.408, the support levels will be as follows:

(i) Until December 1, 2019, the support amount will be $9.25 per month.

(ii) From December 1, 2019 until November 30, 2020, the support amount will be $7.25 per month.

(iii) From December 1, 2020 until November 30, 2021, the support amount will be $5.25 per month.

(iv) On December 1, 2021, standalone voice service, or voice service not bundled with broadband which meets the minimum standards set forth in § 54.408, will not be eligible for Lifeline support unless the Commission has previously determined otherwise.

(v) Notwithstanding paragraph (a)(2)(iv) of this section, on December 1, 2021, the support amount for standalone voice service, or voice service not bundled with broadband which meets the minimum standards set forth in § 54.408, provided by a provider that is the only Lifeline provider in a Census block will be the support amount specified in paragraph (a)(2)(iii) of this section.

* * * * *

■ 9. Amend § 54.405 by revising paragraphs (e)(1), (3), and (4) and adding paragraph (e)(5) to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

* * * * *

(e) * * *

(1) *De-enrollment generally.* If an eligible telecommunications carrier has a reasonable basis to believe that a Lifeline subscriber no longer meets the criteria to be considered a qualifying low-income consumer under § 54.409, the carrier must notify the subscriber of impending termination of his or her Lifeline service. Notification of impending termination must be sent in writing separate from the subscriber's monthly bill, if one is provided, and must be written in clear, easily understood language. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination that requires, at a minimum, written notification of impending termination, must comply with the applicable state requirements. The carrier must allow a subscriber 30 days following the date of the impending termination letter required to demonstrate continued eligibility. A subscriber making such a demonstration must present proof of continued eligibility to the carrier consistent with applicable annual re-certification requirements, as described in § 54.410(f). An eligible telecommunications carrier must de-enroll any subscriber who fails to demonstrate eligibility within five business days after the expiration of the subscriber's time to respond. A carrier

providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination must comply with the applicable state requirements.

* * * * *

(3) *De-enrollment for non-usage.* Notwithstanding paragraph (e)(1) of this section, if a Lifeline subscriber fails to use, as "usage" is defined in § 54.407(c)(2), for 30 consecutive days a Lifeline service that does not require the eligible telecommunications carrier to assess or collect a monthly fee from its subscribers, an eligible telecommunications carrier must provide the subscriber 15 days' notice, using clear, easily understood language, that the subscriber's failure to use the Lifeline service within the 15-day notice period will result in service termination for non-usage under this paragraph. Eligible telecommunications carriers shall report to the Commission annually the number of subscribers de-enrolled for non-usage under this paragraph. This de-enrollment information must be reported by month and must be submitted to the Commission at the time an eligible telecommunications carrier submits its annual certification report pursuant to § 54.416.

(4) *De-enrollment for failure to re-certify.* Notwithstanding paragraph (e)(1) of this section, an eligible telecommunications carrier must de-enroll a Lifeline subscriber who does not respond to the carrier's attempts to obtain re-certification of the subscriber's continued eligibility as required by § 54.410(f); or who fails to provide the annual one-per-household re-certifications as required by § 54.410(f). Prior to de-enrolling a subscriber under this paragraph, the eligible telecommunications carrier must notify the subscriber in writing separate from the subscriber's monthly bill, if one is provided, using clear, easily understood language, that failure to respond to the re-certification request will trigger de-enrollment. A subscriber must be given 60 days to respond to recertification efforts. If a subscriber does not respond to the carrier's notice of impending de-enrollment, the carrier must de-enroll the subscriber from Lifeline within five business days after the expiration of the subscriber's time to respond to the re-certification efforts.

(5) *De-enrollment requested by subscriber.* If an eligible telecommunications carrier receives a request from a subscriber to de-enroll, it must de-enroll the subscriber within two business days after the request.

■ 10. Amend § 54.407 by revising paragraphs (a), (c)(2), and (d) to read as follows:

§ 54.407 Reimbursement for offering Lifeline.

(a) Universal service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers it serves directly as of the first day of the month. After the National Verifier is deployed in a state, reimbursement shall be provided to an eligible telecommunications carrier based on the number of actual qualifying low-income customers it serves directly as of the first day of the month found in the National Verifier.

* * * * *

(c) * * *

(2) After service activation, an eligible telecommunications carrier shall only continue to receive universal service support reimbursement for such Lifeline service provided to subscribers who have used the service within the last 30 days, or who have cured their non-usage as provided for in § 54.405(e)(3). Any of these activities, if undertaken by the subscriber, will establish "usage" of the Lifeline service:

(i) Completion of an outbound call or usage of data;

(ii) Purchase of minutes or data from the eligible telecommunications carrier to add to the subscriber's service plan;

(iii) Answering an incoming call from a party other than the eligible telecommunications carrier or the eligible telecommunications carrier's agent or representative;

(iv) Responding to direct contact from the eligible communications carrier and confirming that he or she wants to continue receiving Lifeline service; or

(v) Sending a text message.

(d) In order to receive universal service support reimbursement, an officer of each eligible telecommunications carrier must certify, as part of each request for reimbursement, that:

(1) The eligible telecommunications carrier is in compliance with all of the rules in this subpart; and

(2) The eligible telecommunications carrier has obtained valid certification and recertification forms to the extent required under this subpart for each of the subscribers for whom it is seeking reimbursement.

* * * * *

■ 11. Add § 54.408 to read as follows:

§ 54.408 Minimum service standards.

(a) As used in this subpart, with the following exception of paragraph (a)(2) of this section, a minimum service standard is:

(1) The level of service which an eligible telecommunications carrier must provide to an end user in order to receive the Lifeline support amount.

(2) The minimum service standard for mobile broadband speed, as described in paragraph (b)(2)(i) of this section, is the level of service which an eligible telecommunications carrier must both advertise and provide to an end user.

(b) Minimum service standards for Lifeline supported services will take effect on December 1, 2016. The minimum service standards set forth below are subject to the conditions in § 54.401. The initial minimum service standards, as set forth in paragraphs (b)(1) through (3) of this section, will be subject to the updating mechanisms described in paragraph (c) of this section.

(1) Fixed broadband will have minimum service standards for speed and data usage allowance, subject to the exceptions in paragraph (d) of this section.

(i) The minimum service standard for fixed broadband speed will be 10 Megabits per second downstream/1 Megabit per second upstream.

(ii) The minimum service standard for fixed broadband data usage allowance will be 150 gigabytes per month.

(2) Mobile broadband will have minimum service standards for speed and data usage allowance.

(i) The minimum service standard for mobile broadband speed will be 3G.

(ii) The minimum service standard for mobile broadband data usage allowance will be:

(A) From December 1, 2016 until November 30, 2017, 500 megabytes per month;

(B) From December 1, 2017, until November 30, 2018, 1 gigabyte per month;

(C) From December 1, 2018 until November 30, 2019, 2 gigabytes per month; and

(D) On and after December 1, 2019, the minimum standard will be calculated using the mechanism set forth in paragraphs (c)(2)(ii)(A) through (D) of this section. If the data listed in paragraphs (c)(2)(ii)(A) through (D) do not meet the criteria set forth in paragraph (c)(2)(iii) of this section, then the updating mechanism in paragraph (c)(2)(iii) will be used instead.

(3) The minimum service standard for mobile voice service will be:

(i) From December 1, 2016, until November 30, 2017, 500 minutes;

(ii) From December 1, 2017, until November 30, 2018, 750 minutes; and

(iii) On and after December 1, 2018, the minimum standard will be 1000 minutes.

(c) Minimum service standards will be updated using the following mechanisms:

(1) Fixed broadband will have minimum service standards for speed and data usage allowance. The standards will updated as follows:

(i) The standard for fixed broadband speed will be updated on an annual basis. The standard will be set at the 30th percentile, rounded up to the nearest Megabit-per-second integer, of subscribed fixed broadband downstream and upstream speeds. The 30th percentile will be determined by analyzing FCC Form 477 Data. The new standard will be published in a Public Notice issued by the Wireline Competition Bureau on or before July 31, which will give the new minimum standard for the upcoming year. In the event that the Bureau does not release a Public Notice, or the data are older than 18 months, the minimum standard will be the greater of:

(A) The current minimum standard; or

(B) The Connect America Fund minimum speed standard for rate-of-return fixed broadband providers, as set forth in 47 CFR 54.308(a).

(ii) The standard for fixed broadband data usage allowance will be updated on an annual basis. The new standard will be published in a Public Notice issued by the Wireline Competition Bureau on or before July 31, which will give the new minimum standard for the upcoming year. The updated standard will be the greater of:

(A) An amount the Wireline Competition Bureau deems appropriate, based on what a substantial majority of American consumers already subscribe to, after analyzing Urban Rate Survey data and other relevant data; or

(B) The minimum standard for data usage allowance for rate-of-return fixed broadband providers set in the Connect America Fund.

(2) Mobile broadband will have minimum service standards for speed and capacity. The standards will be updated as follows:

(i) The standard for mobile broadband speed will be updated when, after analyzing relevant data, including the FCC Form 477 data, the Wireline Competition Bureau determines such an adjustment is necessary. If the standard for mobile broadband speed is updated, the new standard will be published in a Public Notice issued by the Wireline Competition Bureau.

(ii) The standard for mobile broadband capacity will be updated on an annual basis. The standard will be determined by:

(A) Dividing the total number of mobile-cellular subscriptions in the United States, as reported in the *Mobile Competition Report* by the total number of American households, as determined by the U.S. Census Bureau, in order to determine the number of mobile-cellular subscriptions per American household. This number will be rounded to the hundredths place and then multiplied by;

(B) The percentage of Americans who own a smartphone, according to the Commission's annual *Mobile Competition Report*. This number will be rounded to the hundredths place and then multiplied by;

(C) The average data used per mobile smartphone subscriber, as reported by the Commission in its annual *Mobile Competition Report*. This number will be rounded to the hundredths place and then multiplied by;

(D) Seventy (70) percent. The result will then be rounded up to the nearest 250 MB interval to provide the new monthly minimum service standard for the mobile broadband data usage allowance.

(iii) If the Wireline Competition Bureau does not release a Public Notice giving new minimum standards for mobile broadband capacity on or before July 31, or if the necessary data needed to calculate the new minimum standard are older than 18 months, the data usage allowance will be updated by multiplying the current data usage allowance by the percentage of the year-over-year change in average mobile data usage per smartphone user, as reported in the *Mobile Competition Report*. That amount will be rounded up to the nearest 250 MB.

(d) *Exception for certain fixed broadband providers.* Subject to the limitations in paragraphs (d)(1) through (4) of this section, the Lifeline discount may be applied for fixed broadband service that does not meet the minimum standards set forth in paragraph (b)(1) of this section. If the provider, in a given area:

(1) Does not offer any fixed broadband service that meets our minimum service standards set forth in paragraph (b)(1) of this section; but

(2) Offers a fixed broadband service of at least 4 Mbps downstream/1 Mbps upstream in that given area; then,

(3) In that given area, a fixed broadband provider may receive Lifeline funds for the purchase of its highest performing generally available residential offering, lexicographically ranked by:

(i) Download bandwidth;

(ii) Upload bandwidth; and

(iii) Usage allowance.

(4) A fixed broadband provider claiming Lifeline support under this section will certify its compliance with this section's requirements and will be subject to the Commission's audit authority.

(e) Except as provided in paragraph (d) of this section, eligible telecommunications carriers shall not apply the Lifeline discount to offerings that do not meet the minimum service standards.

(f) *Equipment requirement.* (1) Any fixed or mobile broadband provider, which provides devices to its consumers, must ensure that all such devices provided to a consumer are Wi-Fi enabled.

(2) A provider may not institute an additional or separate tethering charge for any mobile data usage that is below the minimum service standard set forth in paragraph (b)(2) of this section.

(3) Any mobile broadband provider which provides devices to its consumers must offer at least one device that is capable of being used as a hotspot. This requirement will change as follows:

(i) From December 1, 2017 to November 30, 2018, a provider that offers devices must ensure that at least 15 percent of such devices are capable of being used as a hotspot.

(ii) From December 1, 2018 to November 30, 2019, a provider that offers devices must ensure that at least 20 percent of such devices are capable of being used as a hotspot.

(iii) From December 1, 2019 to November 30, 2020, a provider that offers devices must ensure that at least 25 percent of such devices are capable of being used as a hotspot.

(iv) From December 1, 2020 to November 30, 2021, a provider that offers devices must ensure that at least 35 percent of such devices are capable of being used as a hotspot.

(v) From December 1, 2021 to November 30, 2022, a provider that offers devices must ensure that at least 45 percent of such devices are capable of being used as a hotspot.

(vi) From December 1, 2022 to November 30, 2023, a provider that offers devices must ensure that at least 55 percent of such devices are capable of being used as a hotspot.

(vii) From December 1, 2023 to November 30, 2024, a provider that offers devices must ensure that at least 65 percent of such devices are capable of being used as a hotspot.

(viii) On December 1, 2024, a provider that offers devices must ensure that at least 75 percent of such devices are capable of being used as a hotspot.

■ 12. Amend § 54.409 by revising paragraph (a)(2) and removing paragraph (a)(3) to read as follows:

§ 54.409 Consumer qualification for Lifeline.

(a) * * *

(2) The consumer, one or more of the consumer's dependents, or the consumer's household must receive benefits from one of the following federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; or Veterans and Survivors Pension Benefit.

* * * * *

■ 13. Amend § 54.410 by

■ a. Revising paragraphs (b)(1) introductory text, (b)(1)(i)(B), (b)(1)(ii), (b)(2) introductory text, (b)(2)(i), (c)(1) introductory text, (c)(1)(ii), (c)(2) introductory text, (c)(2)(i), (d) introductory text, (d)(1) introductory text, (d)(2) introductory text, and (d)(3) introductory text;

■ b. Removing paragraph (d)(3)(v);

■ c. Redesignating paragraphs (d)(3)(vi) through (ix) as paragraphs (d)(3)(v) through (viii);

■ d. Revising paragraphs (e), (f)(1), and (f)(2)(ii) and (iii);

■ e. Adding paragraph (f)(2)(iv);

■ f. Revising paragraphs (f)(3) introductory text, (f)(3)(ii) and (iii), (f)(4) and (5), and (g); and

■ g. Adding paragraph (h).

The revisions and additions read as follows:

§ 54.410 Subscriber eligibility determination and certification.

* * * * *

(b) * * *

(1) Except where the National Verifier, state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, when a prospective subscriber seeks to qualify for Lifeline using the income-based eligibility criteria provided for in § 54.409(a)(1) an eligible telecommunications carrier:

(i) * * *

(B) If an eligible telecommunications carrier cannot determine a prospective subscriber's income-based eligibility by accessing income databases, the eligible telecommunications carrier must review documentation that establishes that the prospective subscriber meets the income-eligibility criteria set forth in § 54.409(a)(1). Acceptable documentation of income eligibility includes the prior year's state, federal, or Tribal tax return; current income statement from an employer or paycheck stub; a Social Security statement of benefits; a Veterans Administration statement of benefits; a retirement/pension statement of benefits; an Unemployment/Workers' Compensation statement of benefit; federal or Tribal notice letter of participation in General Assistance; or a divorce decree, child support award, or other official document containing income information. If the prospective subscriber presents documentation of income that does not cover a full year, such as current pay stubs, the prospective subscriber must present the same type of documentation covering three consecutive months within the previous twelve months.

(ii) Must securely retain copies of documentation demonstrating a prospective subscriber's income-based eligibility for Lifeline consistent with § 54.417, except to the extent such documentation is retained by National Verifier.

(2) Where the National Verifier, state Lifeline administrator, or other state agency is responsible for the initial determination of a subscriber's eligibility, an eligible telecommunications carrier must not seek reimbursement for providing Lifeline service to a subscriber, based on that subscriber's income eligibility, unless the carrier has received from the National Verifier, state Lifeline administrator, or other state agency:

(i) Notice that the prospective subscriber meets the income-eligibility criteria set forth in § 54.409(a)(1); and

* * * * *

(c) * * *

(1) Except in states where the National Verifier, state Lifeline administrator, or other state agency is responsible for the initial determination of a subscriber's program-based eligibility, when a prospective subscriber seeks to qualify for Lifeline service using the program-based criteria set forth in § 54.409(a)(2) or (b), an eligible telecommunications carrier:

* * * * *

(ii) Must securely retain copies of the documentation demonstrating a subscriber's program-based eligibility for Lifeline, consistent with § 54.417, except to the extent such documentation is retained by the National Verifier.

(2) Where the National Verifier, state Lifeline administrator, or other state agency is responsible for the initial determination of a subscriber's eligibility, when a prospective subscriber seeks to qualify for Lifeline service using the program-based eligibility criteria provided in § 54.409(a)(2) or (b), an eligible telecommunications carrier must not seek reimbursement for providing Lifeline to a subscriber unless the carrier has received from the National Verifier, state Lifeline administrator or other state agency:

(i) Notice that the subscriber meets the program-based eligibility criteria set forth in § 54.409(a)(2) or (b); and

* * * * *

(d) *Eligibility certification form.* Eligible telecommunications carriers and state Lifeline administrators or other state agencies that are responsible for the initial determination of a subscriber's eligibility for Lifeline must provide prospective subscribers Lifeline certification forms that provide the information in paragraphs (d)(1) through (3) of this section in clear, easily understood language. If a Federal eligibility certification form is available, entities enrolling subscribers must use such form to enroll a qualifying low-income consumer into the Lifeline program.

(1) The form provided by the entity enrolling subscribers must provide the information in paragraphs (d)(1)(i) through (vi) of this section:

* * * * *

(2) The form provided by the entity enrolling subscribers must require each prospective subscriber to provide the information in paragraphs (d)(2)(i) through (viii) of this section:

* * * * *

(3) The form provided by the entity enrolling subscribers shall require each prospective subscriber to initial his or her acknowledgement of each of the certifications in paragraphs (d)(3)(i) through (viii) of this section individually and under penalty of perjury:

* * * * *

(e) The National Verifier, state Lifeline administrators or other state agencies that are responsible for the initial determination of a subscriber's eligibility for Lifeline must provide each eligible telecommunications carrier with a copy of each of the certification forms collected by the National Verifier, state Lifeline administrator or other state agency for that carrier's subscribers.

(f) * * *

(1) All eligible telecommunications carriers must re-certify all subscribers 12 months after the subscriber's service initiation date and every 12 months thereafter, except for subscribers in states where the National Verifier, state Lifeline administrator, or other state agency is responsible for the annual re-certification of subscribers' Lifeline eligibility.

(2) * * *

(ii) Querying the appropriate income databases, confirming that the subscriber continues to meet the income-based eligibility requirements for Lifeline, and documenting the results of that review.

(iii) If the subscriber's program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more state databases containing information regarding enrollment in qualifying assistance programs, then the National Verifier, state Lifeline administrator, or state agency may obtain a signed certification from the subscriber on a form that meets the certification requirements in paragraph (d) of this section. If a Federal eligibility recertification form is available, entities enrolling subscribers must use such form to re-certify a qualifying low-income consumer.

(iv) In states in which the National Verifier has been implemented, the eligible telecommunications carrier cannot re-certify subscribers not found in the National Verifier by obtaining a certification form from the subscriber.

(3) Where the National Verifier, state Lifeline administrator, or other state agency is responsible for re-certification of a subscriber's Lifeline eligibility, the National Verifier, state Lifeline administrator, or state agency must confirm a subscriber's current eligibility to receive a Lifeline service by:

* * * * *

(ii) Querying the appropriate income databases, confirming that the subscriber continues to meet the income-based eligibility requirements for Lifeline, and documenting the results of that review.

(iii) If the subscriber's eligibility for Lifeline cannot be determined by accessing one or more databases containing information regarding enrollment in qualifying assistance programs, then the National Verifier, state Lifeline administrator, or state agency may obtain a signed certification from the subscriber on a form that meets the certification requirements in paragraph (d) of this section. If a Federal eligibility recertification form is available, entities enrolling subscribers must use such form to recertify a qualifying low-income consumer.

(4) Where the National Verifier, state Lifeline administrator, or other state agency is responsible for re-certification or subscribers' Lifeline eligibility, the National Verifier, state Lifeline administrator, or other state agency must provide to each eligible telecommunications carrier the results of its annual re-certification efforts with respect to that eligible telecommunications carrier's subscribers.

(5) If an eligible telecommunications carrier is unable to re-certify a subscriber or has been notified by the National Verifier, a state Lifeline administrator, or other state agency's inability to re-certify a subscriber, the eligible telecommunications carrier must comply with the de-enrollment requirements provided for in § 54.405(e)(4).

(g) *One-Per-Household Worksheet.* The prospective subscriber will complete a form certifying compliance with the one-per-household rule upon initial enrollment. Such form will provide an explanation of the one-per-household rule; include a check box that the applicant can mark to indicate that he or she lives at an address occupied by multiple households; a space for the applicant to certify that he or she shares an address with other adults who do not contribute income to the applicant's household and share in the household's expenses or benefit from the applicant's income; and the penalty for consumer's failure to make the required one-per-household certification, *i.e.* de-enrollment. At re-certification, if there are changes to the subscriber's household that would prevent the subscriber from accurately certifying to § 54.410(d)(3)(vi), then the subscriber must complete a new One-Per-Household Worksheet. If a Federal One Per Household Form is available, entities enrolling subscribers must use such form.

(h) *National Verifier transition.* As the National Verifier is implemented in a state, the obligations in paragraphs (b) through (g) of this section with respect to the National Verifier and eligible telecommunications carriers will also take effect.

■ 14. Add § 54.411 to read as follows:

§ 54.411 Lifeline benefit portability.

(a) A provider shall not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who has used the Lifeline benefit to enroll in a qualifying Lifeline-supported broadband Internet access service offering with another Lifeline provider within the previous 12 months.

(b) A provider shall not seek or receive reimbursement through the Lifeline program for service provided to a subscriber who has used the Lifeline benefit to enroll in a qualifying Lifeline-supported voice telephony service offering with another Lifeline provider within the previous 60 days.

(c) Notwithstanding paragraphs (a) and (b) of this section, a provider may seek and receive reimbursement through the Lifeline program for service provided to a subscriber prior to the completion of the 12-month period described in paragraph (a) of this section or the 60-day period described in paragraph (b) of this section if:

(1) The subscriber moves their residential address;

(2) The subscriber's current provider ceases operations or otherwise fails to provide service;

(3) The provider has imposed late fees for non-payment greater than or equal to the monthly end-user charge for the supported service; or

(4) The subscriber's current provider is found to be in violation of the Commission's rules during the 12-month period and the subscriber is impacted by such violation.

(d) If a subscriber transfers his or her Lifeline benefit pursuant to paragraph (c) of this section, the subscriber's Lifeline benefit will apply to the newly selected service until the end of the original 12-month period. In these circumstances, the subscriber is not required to re-certify eligibility until the end of the original 12-month period. The subscriber's original provider must provide the subscriber's eligibility records to either the subscriber's new provider or the subscriber to comply with the 12-month service period.

■ 15. Amend § 54.416 by adding paragraph (a)(3) to read as follows:

§ 54.416 Annual certifications by eligible telecommunications carriers.

(a) * * *

(3) An officer of the eligible telecommunications carrier must certify that the carrier is in compliance with the minimum service levels set forth in § 54.408. Eligible telecommunications carriers must make this certification annually to the Administrator as part of the carrier's submission of re-certification data pursuant to this section.

* * * * *

■ 16. Amend § 54.420 by revising paragraph (b) to read as follows:

§ 54.420 Low income program audits.

* * * * *

(b) *Audit requirements for new eligible telecommunications carriers.* After a company is designated for the first time in any state or territory, the Administrator will audit that new eligible telecommunications carrier to assess its overall compliance with the rules in this subpart and the company's internal controls regarding these regulatory requirements. This audit should be conducted within the carrier's first twelve months of seeking federal low-income Universal Service Fund support, unless otherwise determined by the Office of Managing Director.

■ 17. Amend § 54.422 by revising paragraph (b)(3) to read as follows:

§ 54.422 Annual reporting for eligible telecommunications carriers that receive low-income support.

* * * * *

(b) * * *

(3) Certification of compliance with applicable minimum service standards, as set forth in § 54.408, service quality standards, and consumer protection rules;

* * * * *

■ 18. Add § 54.423 to read as follows:

§ 54.423 Budget.

(a) *Amount of the annual budget.* The initial annual budget on federal universal support for the Lifeline program shall be $2.25 billion.

(1) *Inflation increase.* In funding year 2016 and subsequent funding years, the $2.25 billion funding cap on federal universal service support for Lifeline shall be automatically increased annually to take into account increases in the rate of inflation as calculated in paragraph (a)(2) of this section.

(2) *Increase calculation.* To measure increases in the rate of inflation for the purposes of paragraph (a) of this section, the Commission shall use the Consumer Price Index for all items from the Department of Labor, Bureau of Labor Statistics. To compute the annual increase as required by this paragraph (a), the percentage increase in the Consumer Price Index from the previous year will be used. For instance, the annual increase in the Consumer Price Index from 2015 to 2016 would be used for the 2017 funding year. The increase shall be rounded to the nearest 0.1 percent by rounding 0.05 percent and above to the next higher 0.1 percent and otherwise rounding to the next lower 0.1 percent. This percentage increase shall be added to the amount of the annual funding cap from the previous funding year. If the yearly average Consumer Price Index decreases or stays the same, the annual funding cap shall remain the same as the previous year.

(3) The Wireline Competition Bureau shall issue a public notice on or before July 31 containing the results of the calculations described in § 54.403(a)(2) and setting the budget for the upcoming year beginning on January 1.

(b) If spending in the Lifeline program meets or exceeds 90 percent of the Lifeline budget in a calendar year, the Wireline Competition Bureau shall prepare a report evaluating program disbursements and describing the reasons for the program's growth along with any other information relevant to the operation of the Lifeline program. The Bureau shall submit the report to the Commission by July 31st of the following year.

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 11, 121, et al.
Acceptance Criteria for Portable Oxygen Concentrators Used On Board Aircraft; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 11, 121, 125, and 135

Office of the Secretary

14 CFR Part 382

[Docket No.: FAA–2014–0554; Amdt. Nos. 1–69, 11–59, 121–374, 125–65, and 135–133]

RIN 2120–AK32

Acceptance Criteria for Portable Oxygen Concentrators Used On Board Aircraft

AGENCY: Federal Aviation Administration (FAA) and Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule replaces the existing process by which the Federal Aviation Administration (Agency or FAA) approves portable oxygen concentrators (POC) for use on board aircraft in air carrier operations, commercial operations, and certain other operations using large aircraft. The FAA currently assesses each POC make and model on a case-by-case basis and if the FAA determines that a particular POC is safe for use on board an aircraft, the FAA conducts rulemaking to identify the specific POC model in an FAA regulation. This final rule replaces the current process and allows passengers to use a POC on board an aircraft if the POC satisfies certain acceptance criteria and bears a label indicating conformance with the acceptance criteria. The labeling requirement only affects POCs intended for use on board aircraft that were not previously approved for use on aircraft by the FAA. Additionally, this rulemaking will eliminate redundant operational requirements and paperwork requirements related to the physician's statement. As a result, this rulemaking will reduce burdens for POC manufacturers, passengers who use POCs while traveling, and affected aircraft operators. This final rule also makes conforming amendments to the Department of Transportation's (Department or DOT) rule implementing the Air Carrier Access Act (ACAA) to require carriers to accept all POC models that meet FAA acceptance criteria as detailed in this rule.

DATES: The amendments to 14 CFR 1.1, 1.2, 121.574, 125.219, and 135.91 are effective June 23, 2016. The amendments to 14 CFR 11.201, 121.306, 125.204, 135.144, 382,27, and 382.133, and the removal of Special Federal Aviation Regulation No. 106 are effective August 22, 2016.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see "How to Obtain Additional Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact DK Deaderick, 121 Air Carrier Operations Branch, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, AFS–220, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7480; email *dk.deaderick@faa.gov.* For questions regarding the Department's disability regulation (14 CFR part 382), contact Clereece Kroha, Senior Attorney, Office of Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9041; email *clereece.kroha@dot.gov.*

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I. Executive Summary

A. Overview of Final Rule

This final rule affects the use of POCs on board aircraft in operations conducted under title 14 of the Code of Federal Regulations (14 CFR) parts 121, 125, and 135, by replacing the existing FAA case-by-case approval process for each make and model of POC in Special Federal Aviation Regulation (SFAR) No. 106, with FAA acceptance criteria. Under SFAR No. 106, each time the FAA approves a specific model of POC for use on board aircraft, the agency updates the list of approved POCs in the SFAR.[1]

This final rule removes SFAR No. 106 and replaces it with POC acceptance criteria and specific labeling requirements to identify POCs that conform to the acceptance criteria. POCs that conform to the final rule acceptance criteria will be allowed on board aircraft without additional FAA review and rulemaking.

As with existing requirements for FAA approval of POCs that may be used on aircraft, the final rule acceptance criteria and labeling requirement only apply to POCs intended for use on board aircraft. Table 1 provides a comparison of the final rule acceptance criteria and labeling requirement with related SFAR No. 106.

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[1] POCs identified in the SFAR are referred to in this preamble as SFAR-approved POCs or SFAR-approved devices.

TABLE 1—COMPARISON OF FINAL RULE ACCEPTANCE CRITERIA AND LABELING REQUIREMENT WITH RELATED SFAR NO. 106 REQUIREMENTS

	Related SFAR No. 106 requirements	Final rule acceptance criteria and labeling requirement
Food and Drug Administration (FDA) clearance to market the device.	The POC must be regulated by the FDA (section 2(2)) *Note:* To satisfy this requirement, manufacturers provide the FAA with the FDA letter granting approval to market the device (the FDA response to a manufacturer's 510(k) submission).	The POC manufacturer has received FDA clearance to legally market the device in the United States.
Hazardous materials	The POC may not contain hazardous materials as determined by the Pipeline and Hazardous Materials Safety Administration (section 2(1)). *Note:* To satisfy this requirement, manufacturers currently provide the FAA with a Pipeline and Hazardous Materials Safety Administration (PHMSA) determination letter stating that the POC is not subject to the Hazardous Materials Regulations (HMR) (49 CFR parts 171–180).	The POC must not contain any hazardous materials subject to the HMR, except as provided for batteries in the exceptions for crewmembers and passengers (49 CFR 175.10). The maximum oxygen pressure generated by the POC must fall below the threshold for the definition of a compressed gas as per the HMR.
Radio frequency (RF) emissions.	Operator must determine that POC does not cause interference with the electrical, navigation or communication equipment on the aircraft on which the device is to be used (section 3(a)(1)). *Note:* To satisfy this requirement, it is current practice for operators to use testing data provided by POC manufacturers regarding the RF emissions of a specific POC model. Manufacturers currently complete testing in accordance with RTCA standard 160G, Section 21, Category M.	The POC's RF emissions do not interfere with aircraft systems.
Identification of POCs safe for use on board aircraft.	POC model must be identified in SFAR No. 106 as approved for use on board aircraft prior to use on board aircraft in part 121, 125, and 135 operations (sections 2, 3(a)). *Note:* Specific POCs approved for use on board aircraft are identified in SFAR No. 106 by manufacturer and model name. Although some POC manufacturers affix a label indicating FAA approval for use on board aircraft, there is no current FAA requirement for a label indicating this approval.	In order to be used on aircraft, a label must be affixed to the POC indicating compliance with acceptance criteria pertaining to FDA clearance to market the device, hazardous materials, and RF emission limits. POC models identified in existing SFAR No. 106 satisfy the acceptance criteria and will be exempt from the labeling requirement. These POC models will continue to be identified in the regulatory text.

This final rule requires all POC models to conform to the acceptance criteria.[2] Further, any POC model that was not previously identified in SFAR No. 106 as approved for use on aircraft must also bear a label indicating conformance with the acceptance criteria before it may be used on board an aircraft. This label will facilitate passenger and crew recognition of POCs that may be used in the cabin during all phases of flight.

SFAR-approved POC models need not bear a label. The final rule regulatory text includes a list of POCs approved in accordance with SFAR No. 106 so that passengers and crewmembers can continue to identify these POCs as approved for use on board aircraft.

In addition, this final rule eliminates SFAR No. 106 requirements related to POC use on board aircraft that are addressed elsewhere in titles 14 or 49 of the CFR. This final rule also eliminates specific SFAR No. 106 requirements applicable to passengers that are not necessary for safe POC use on board aircraft, and impose an unnecessary and unreasonable paperwork burden on POC-using passengers and their physicians as well as crewmembers and aircraft operators. This final rule also increases accessibility in air travel for passengers who require oxygen therapy during flight. Table 2 summarizes the final rule disposition of all SFAR No. 106 provisions.

TABLE 2—SUMMARY OF SFAR NO. 106 PROVISIONS AND DISPOSITION IN FINAL RULE

Summary of SFAR No. 106 provision	Description of disposition in final rule
• Requirement that the POC is legally marketed in the United States in accordance with FDA requirements (section 2(2)). • Requirement for operator to determine that POC does not cause interference with the electrical, navigation or communication equipment on the aircraft on which the device is to be used (section 3(a)(1)).	SFAR No. 106 Provisions Reflected in Acceptance Criteria and Labeling Requirement.

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[2] POC models previously listed as approved for use on board aircraft in SFAR No. 106 received approval because they satisfied the criteria set forth in SFAR No. 106. The POC acceptance criteria identified in this final rule are based on existing SFAR No. 106 requirements that must be satisfied before the FAA identifies a POC in SFAR No. 106 as approved for use on aircraft. Thus, a POC model identified in SFAR No. 106 satisfies the acceptance criteria.

TABLE 2—SUMMARY OF SFAR NO. 106 PROVISIONS AND DISPOSITION IN FINAL RULE—Continued

Summary of SFAR No. 106 provision	Description of disposition in final rule
• Prohibition on POCs containing hazardous materials as determined by the Pipeline and Hazardous Materials Safety Administration (section 2(1)).	
• POC model must be identified in SFAR No. 106 prior to use in part 121, 125, and 135 operations (sections 2, 3(a))*.	
• Prohibition on smoking or open flame near POC (section 3(a)(2))	SFAR No. 106 Provisions Retained.
• Prohibition on seating a passenger using a POC in an exit seat (section 3(a)(4)).	
• Requirement to stow POC during movement on the surface, takeoff, and landing (section 3(a)(3)).	
• POC model must be identified in SFAR No. 106 prior to use in part 121, 125, and 135 operations (sections 2, 3(a))*.	
• "Whenever the pilot in command turns off the "Fasten Seat Belt" sign, or otherwise signifies that permission is granted to move about the passenger cabin, passengers operating their portable oxygen concentrator may continue to operate it while moving about the cabin." (section 3(a)(6)).	SFAR No. 106 Provisions Eliminated Because Addressed in Other Existing Regulations.
• Requirement for POC user to ensure that POC batteries in carry-on baggage are protected from short circuit and are packaged in a manner that protects them from physical damage (section 3(b)(6)).	
• "Whenever the pilot in command turns off the "Fasten Seat Belt" sign, or otherwise signifies that permission is granted to move about the passenger cabin, passengers operating their portable oxygen concentrator may continue to operate it while moving about the cabin." (section 3(a)(6)).	SFAR No. 106 Provisions Eliminated Because Addressed in Other Existing Regulations.
• Requirement for POC user to ensure that POC batteries in carry-on baggage are protected from short circuit and are packaged in a manner that protects them from physical damage (section 3(b)(6)).	
• Requirements for POC user to obtain a physician's statement and provide notice to pilot and aircraft operator regarding POC use and contents of physician statement (sections 3(a)(5) and 3(b)(3)).	SFAR No. 106 Provisions Eliminated in Their Entirety.
• Requirement for POC user to be capable of responding to alarms or to travel with a person who can perform these functions (section 3(b)(1)).	
• Requirement for POC user to ensure that the POC is free of petroleum products or signs of excessive wear or abuse (section 3(b)(2)).	
• Prohibition on use of salves and lotions unless "oxygen approved" (section 3(b)(4))	
• Requirement for passenger to carry a sufficient number of batteries for duration of flight (section 3(b)(5))**.	

*The list of POCs currently identified in SFAR No. 106 will be maintained in parts 121, 125 and 135. A detailed discussion regarding the identification of POCs that conform to the acceptance criteria is provided in the preamble discussion, "Manufacturer Label."

** Air carriers may require passengers using a POC to bring an adequate number of batteries to power a POC. *See* 14 CFR 382.133.

This final rule also includes several conforming changes to 14 CFR part 382 to ensure that the Department's rule requiring carriers to accommodate passengers with disabilities who are traveling with POCs is consistent with the FAA changes to POC carriage and use on aircraft.

Finally, the amendments provided in this final rule are consistent with the retrospective regulatory review requirements of Executive Order 13563. On January 18, 2011, the President signed Executive Order 13563, Improving Regulation and Regulatory Review. Among other things, Section 6 of that Executive Order directs agencies to conduct a retrospective analysis of existing rules. Specifically, Executive Order 13563 provides that "[t]o facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned."

Consistent with Executive Order 13563, the FAA routinely evaluates existing regulations and other requirements. The FAA works to identify unnecessary, duplicative, or ineffective regulations and to mitigate the impacts of those regulations, where possible, without compromising safety.

As part of the FAA's continuing obligation to review its regulations, the agency conducted an analysis of SFAR No. 106 and determined that it involves several unnecessary burdens. As a result of this determination and the resulting final rule amendments, the final rule will provide relief to POC manufacturers, passengers who use a POC, aircraft operators and the FAA. The final rule will provide relief to POC manufacturers and the FAA by eliminating the SFAR No. 106 POC approval process, to passengers who use a POC by eliminating the FAA requirement to obtain a physician's statement, and to aircraft operators by eliminating the requirements for crewmember review of the physician's statement and pilot in command (PIC) notification. The quantification of benefits follows the same methodology as the proposed rule as the agency did not receive negative comments on this methodology. The agency presents cost savings in Table 3 below.

The total cost savings from this final rule is $39.5 million ($27.6 million at 7% present value and $33.6 million at 3% present value). The largest cost savings of $39 million occurs from the reduction of crew time to review the physician's statement. These are the same estimated benefits and costs as presented for the proposed rule and since the FAA received no comments regarding these estimates, there are no changes to this final rule.

B. Summary of Cost Savings

The FAA estimates that manufacturers will save $108,000 over ten years because they will no longer have to petition the FAA for rulemaking with each new device they want to add to the list of POCs approved for use during flight on board aircraft. These cost savings will be reduced slightly because manufacturers will incur an estimated total one-time cost of $22,000 to comply with the labeling requirement. The FAA estimated additional cost savings because of the discontinuation of certain requirements from SFAR No. 106. Table 3 presents total estimated cost savings.

TABLE 3—TOTAL ESTIMATED COST SAVINGS

	Cost savings	7% Present value savings	3% Present value savings
FAA Savings—No SFAR	$91,644	$68,871	$80,519
Manufacturer Savings—No petition for rulemaking	108,000	75,853	92,126
Removal of FAA requirement for user to obtain a physician's statement for POC use on aircraft	569,961	401,645	486,914
Removal of FAA requirement for crew review of physician's statement and PIC notification	38,726,085	27,083,677	32,972,652
Total Cost Savings	39,495,690	27,630,045	33,632,212

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which vests final authority in the Administrator for carrying out all functions, powers, and duties of the administration relating to the promulgation of regulations and rules, and section 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. Further, 49 U.S.C. 41705 provides the Secretary of Transportation the authority to prohibit discrimination against a qualified individual with a disability in air travel.

III. Background

A. Statement of the Problem

On July 12, 2005, the FAA published a final rule adding SFAR No. 106 to part 121 of title 14 (70 FR 40156). The final rule adding SFAR No. 106 permitted the use of POCs identified in the SFAR to address the needs of passengers requiring oxygen therapy while traveling on board aircraft.

Prior to SFAR No. 106, passengers could carry and operate equipment generating, storing or dispensing medical oxygen on board an aircraft only if the equipment was furnished by the certificate holder and certain other conditions prescribed in 14 CFR 121.547, 125.219 and 135.91 were satisfied. In 2005, only a limited number of air carriers provided compressed medical oxygen, for a fee, to passengers who required medical oxygen therapy during flight. Because compressed oxygen is considered a hazardous material, it was an expensive and logistically challenging exercise for air carriers to provide medical oxygen. Today, virtually no certificate holders conducting part 121 operations provide in-flight medical oxygen for a fee to passengers.

Further, passengers requiring oxygen therapy during travel also faced difficulty coordinating service between the carrier and the medical oxygen supplier to ensure coverage at the terminal, on board the aircraft, and gate-to-gate. Sometimes, passengers would spend at least part of the time travelling without medical oxygen due to service problems with the oxygen supplier.

In 2002, POCs were brought to the attention of the FAA as a new portable technology for dispensing medical oxygen for purposes of oxygen therapy. POCs work by filtering nitrogen from the air and providing the POC user with oxygen at a concentration of approximately 90 percent. Thus, POCs do not require the same level of special handling as compressed oxygen. However, due to existing FAA regulations applicable to the use of devices that dispense oxygen (§§ 121.574, 125.219, and 135.91), including POCs, the FAA informed the POC community that an exemption would be required for a passenger to carry on and operate a POC that the passenger supplied for his or her own use (*i.e.,* not furnished by the aircraft operator).

Rather than wait for petitions for exemption from the existing regulations (§§ 121.574, 125.219, and 135.91), the FAA completed rulemaking to address the issue of passenger-supplied POCs by adding SFAR No. 106 to title 14. *See* 69 FR 42324 (July 14, 2004) and 70 FR 40156 (July 12, 2005). SFAR No. 106 allows passengers to carry and operate their own POC on board an aircraft if the FAA has approved the specific POC model for use on board aircraft and identified the POC model in the SFAR.[3] As a result of SFAR No. 106, the FAA has mitigated the challenges faced by passengers requiring oxygen therapy during travel and has increased the accessibility to air travel for many passengers requiring oxygen therapy by allowing passengers to supply their own POCs for use during air travel.

Passengers may not use a POC on board an aircraft in part 121, 125, or 135 operations unless the FAA has identified the device they wish to use in SFAR No. 106 as approved for use in such operations. In 2005, SFAR No. 106 identified the first specific POC models approved for use on board aircraft. Although the agency intended SFAR No. 106 to serve as a special, temporary regulation, until POC performance standards (acceptance criteria) could be developed, it has remained in place for the last decade. *See* 70 FR at 40158–40159. During this time, the FAA has amended SFAR No. 106 seven times to identify additional POC models that may be used on board aircraft.[4] This process is time-consuming for POC manufacturers because they must petition the FAA for rulemaking to add their POC model to the SFAR list if they want their POC to be approved for use on board aircraft. Together with a petition for rulemaking, manufacturers provide the FAA with documentation required for the FAA to make a determination whether the POC satisfies the requirements of the SFAR. This process is also time-consuming for the FAA because each time the FAA approves a new POC for use on board aircraft, the FAA must complete rulemaking to add the newly approved POC model to SFAR No. 106.

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[3] Initially, SFAR No. 106 applied to part 119 certificate holders conducting operations under part 121. In a technical amendment published January 12, 2007 (72 FR 1442), the FAA extended the requirements of SFAR No. 106 to part 119 certificate holders conducting operations under parts 125 and 135.

[4] 71 FR 53956 (Sept. 12, 2006); 74 FR 2354 (Jan. 15, 2009); 75 FR 742 (Jan. 6, 2010); 75 FR 39632 (July 12, 2010); 77 FR 4220 (Jan. 27, 2012); 77 FR 63221 (Oct. 16, 2012); and 79 FR 6018 (Feb. 3, 2014).

Over the last ten years, FAA regulations and guidance regarding the use of POCs on aircraft, POC technology itself, and air carrier programs concerning the use of POCs on board their aircraft have rapidly evolved. The combined result of these initiatives is an increase in accessibility to air travel for many passengers who require oxygen therapy during flight. In keeping with the Department's ongoing commitment to increase accessibility to air travel, this final rule removes certain burdensome and time-consuming requirements that were put in place to ensure safety when POC technology was first introduced for use on board aircraft but are no longer necessary.

B. Summary of the NPRM

On September 19, 2014, the FAA published an NPRM entitled "Acceptance Criteria for Portable Oxygen Concentrators Used On Board Aircraft" in which the FAA proposed to replace SFAR No. 106 with acceptance criteria for POCs to be used by passengers on board aircraft in operations conducted under parts 121, 125 and 135. *See* 79 FR 56288. In the NPRM, the FAA proposed to replace the burdensome SFAR No. 106 POC approval process with acceptance criteria based on SFAR No. 106 requirements, and an additional requirement for POCs (carried and used on board aircraft) to bear a label indicating compliance with these acceptance criteria. The FAA proposed, however, that all SFAR-approved POCs would be excluded from the labeling requirement. Further, the proposed acceptance criteria and labeling requirements would only affect POCs intended for use on board aircraft. The FAA also proposed to eliminate several redundant operational requirements as well as paperwork requirements related to the physician's statement, which are not necessary for aviation safety.

The comment period for this NPRM closed November 18, 2014.

C. Differences Between Notice of Proposed Rulemaking and Final Rule

The final rule differs from the NPRM as follows:

- Replaces the proposed prescriptive requirement for radio frequency (RF) emissions evaluation with a performance-based standard that allows POC manufacturers to determine the means by which to assess whether its POC will radiate RF emissions that interfere with aircraft systems.
- Modifies verbiage for required label text.
- Retains the SFAR No. 106 prohibition on exit row seating for passengers using a POC and the SFAR No. 106 requirements pertaining to POC stowage.
- Amends 14 CFR part 382 to ensure that it is consistent with the FAA changes to POC carriage and use on aircraft.

D. General Overview of Comments

The FAA received 33 comments on the NPRM. Commenters included 21 individuals or anonymous commenters, the Airline Pilots Association (ALPA), Airlines for America (A4A), the Association of Flight Attendants (AFA), American Airlines, Delta Air Lines, Main Clinic Supply, Phillips Respironics, BPR Medical Limited, Oxygen to Go (OTG), the Mayo Clinic, and one commenter identified as the past president of the Airlines Medical Directors Association (AMDA).

Although the FAA received general support for the NPRM from many commenters, some commenters recommended modifications to the proposed acceptance criteria, POC labeling requirements, and issues related to the identification of POCs that may be used on board aircraft. Other commenters did not support the elimination of certain SFAR No. 106 provisions, including those pertaining to exit row seating for passengers using a POC, POC stowage, the physician's statement and passenger notification of intended POC use to the PIC and aircraft operator. Comments are addressed in the preamble discussion entitled, "Discussion of Public Comments and Final Rule."

The agency also received a request from OTG to reopen the comment period. The agency denied this request, because the agency satisfied the requirement of the Administrative Procedure Act to publish a general notice of a proposed rule in the **Federal Register**. *See* 5 U.S.C. 553. Both the request to reopen the comment period and the agency's response to this request can be found in the docket for this rulemaking.

IV. Discussion of Public Comments and Final Rule

A. Applicability, Effective Dates and Compliance

Currently, SFAR No. 106 applies only to those POC models intended for use on board aircraft in operations conducted under parts 121, 125, and 135 of title 14 of the Code of Federal Regulations. SFAR No. 106 authorizes the use of specific POCs on board aircraft in operations conducted under parts 121, 125, or 135, if the conditions in the SFAR are satisfied.

Consistent with SFAR No. 106 and the NPRM, this final rule applies only to those POC models intended for use on board aircraft in part 121, 125, and 135 operations, and like SFAR No. 106 it does not create a requirement for operators to allow POC use. The Department's requirements for air carriers to allow the use of a POC on board an aircraft (designed to have a maximum capacity of more than 19 passenger seats) continue to be found in 14 CFR 382.133.

In the NPRM, the agency proposed an effective date of 90 days after publication of the final rule in the **Federal Register**. Because the agency did not propose a separate compliance date, compliance would also be required 90 days after publication in the **Federal Register**.

The agency seeks to allow compliance with this final rule as soon as possible. The agency recognizes, however, that affected aircraft operators may need to revise operating manuals and training programs, and expects these revisions to occur within the normal course of business. Accordingly, the SFAR will remain in place until August 22, 2016 and compliance with the new rule will be permitted beginning on August 22, 2016 to allow a sufficient amount of time for operating manuals and training programs to be amended in the normal course of business.

B. Definition of Portable Oxygen Concentrator

As proposed, this final rule defines "portable oxygen concentrator" in 14 CFR 1.1 as a medical device that separates oxygen from other gasses in ambient air and dispenses this concentrated oxygen to the user. This definition is consistent with the description of POCs in existing SFAR No. 106. The § 1.1 definition of a POC added by this final rule is also consistent with Advisory Circular (AC) 120–95, Portable Oxygen Concentrators,[5] as well as the device description used by POC manufacturers and the Food and Drug Administration (FDA) (the federal agency with primary regulatory authority over POCs for medical use).[6]

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[5] AC 120–95B defines POCs as "small, portable devices that work by separating oxygen from nitrogen and other gasses in the air and providing the user with oxygen at a concentration of more than 90 percent . . ."

[6] Portable oxygen concentrators are a subset of portable oxygen generators defined by the FDA in 21 CFR 868.5440.

By including this definition in § 1.1, the FAA distinguishes POCs from portable oxygen generators and other medical devices that use compressed or liquid oxygen for medical oxygen therapy. Devices that use compressed or liquid oxygen must satisfy separate and more rigorous requirements to mitigate the risks they present.

C. Portable Oxygen Concentrator Acceptance Criteria

Under SFAR No. 106, the FAA allows the carriage and use of specific POC models only if they are identified in the SFAR as approved for use on board aircraft. A POC may be identified in the SFAR only after the POC manufacturer has petitioned the FAA for rulemaking (to add the POC to the SFAR) and has demonstrated to the FAA that the specific POC model satisfies the requirements of the SFAR (*i.e.,* the POC must be regulated by the FDA and the POC may not contain hazardous materials as determined by PHMSA).

Each time the FAA approves a specific model of POC for use on board an aircraft, the agency must update the list of POCs in the SFAR through rulemaking. Additionally, the aircraft operator is responsible for determining that the POC does not cause interference with aircraft equipment. The FAA notes that in practice, aircraft operators use data supplied by POC manufacturers to the FAA to determine compliance with the requirement to ensure that a POC will not interfere with aircraft equipment.

In the NPRM, the agency proposed to replace the SFAR No. 106 case-by-case POC approval and rulemaking with requirements for POCs used on board aircraft to conform to specified acceptance criteria and to bear a label indicating that the device conforms to these criteria. The proposal further stated that POCs conforming to the acceptance criteria and bearing the appropriate label would be allowed on board aircraft without further rulemaking. The proposed acceptance criteria are summarized as follows:

- The POC manufacturer complies with all FDA requirements to legally market the device in the United States.
- The POC does not contain any hazardous materials subject to the HMR except as provided for in the exceptions for crewmembers and passengers in 49 CFR 175.10 for batteries used to power electronic devices when operator approval is not required.
- The maximum oxygen pressure generated by the POC must fall below the threshold for the definition of a compressed gas per the HMR.
- The POC radio frequency (RF) emissions must fall below the threshold permitted in RTCA standard 160G, Section 21, Category M.

As addressed in more detail in this section of the preamble discussion, this final rule adopts the proposal with modifications to the RF emissions acceptance criterion and labeling requirement.

1. Food and Drug Administration Clearance or Approval

POCs are medical devices regulated by the FDA in accordance with the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), and title 21 of the CFR. Accordingly, manufacturers must obtain FDA clearance or approval prior to marketing a POC within the United States, and must comply with certain provisions in title 21 of the CFR, including but not limited to device registration and listing (21 CFR part 807), labeling (21 CFR part 801), adverse event reporting (21 CFR part 803), and good manufacturing practice requirements (21 CFR part 820).

SFAR No. 106 requires all POCs used on board aircraft in operations conducted under 14 CFR parts 121, 125, and 135 to be legally marketed as a POC, in compliance with FDA regulations. The purpose of this requirement is to ensure the device is actually what the manufacturer holds it out to be—a POC. To demonstrate compliance with this requirement, POC manufacturers submit evidence that the device has been cleared or approved by the FDA for marketing in the United States. The FAA accepts FDA premarket clearance in response to a 510(k) submission as evidence the device may be marketed in the United States.[7]

In the NPRM, the agency proposed to continue to require any POC used on board an aircraft to be cleared or approved by the FDA for marketing in the United States prior to such use. However, given that FDA requirements for legal marketing of a POC in the United States already apply to POCs, independent of the SFAR, manufacturers would no longer need to submit evidence of this clearance or approval to the FAA to demonstrate compliance because it would be unnecessarily burdensome. Rather, the FAA proposed that POCs conforming to the proposed acceptance criteria, including the manufacturer's authority to legally market the device as a POC, would be identified by a label affixed to the device. This final rule adopts this proposed acceptance criterion without change.

2. Radio Frequency Emissions

Sections 121.306, 125.204, and 135.144 place responsibility on the aircraft operator for determining which portable electronic devices (PED) may be safely used on its aircraft. Although the agency recognizes POCs as a type of PED, SFAR No. 106, includes a requirement for an aircraft operator to make a determination that the device does not cause interference with the electrical, navigation, or communication system of the aircraft in which the device will be used. The SFAR No. 106, section 3(a)(1) requirement pertaining to POC interference with aircraft equipment has the same effect as the requirements in §§ 121.306, 125.204, and 135.144 pertaining to all PEDs.

Each operator may establish a method to make a determination regarding the effects of PEDs on its aircraft's avionics systems. Historically, FAA guidance material (*i.e.,* AC 91.21–1 and AC 120–95) identified one method of compliance with the SFAR and §§ 121.306, 125.204, and 135.144 by recommending the operator complete device-by-device evaluations of RF emissions.[8] These evaluations involve comparing the device's RF emissions against the current RTCA DO–160 standards for installed airborne equipment. The FAA identified RTCA DO–160, Environmental Conditions and Test Procedures for Airborne Equipment, Section 21, Category M in guidance material for medical PEDs (including POCs intended for use on aircraft) because it established safe and conservative RF emissions limits for installed aircraft systems.

Consistent with the historical device-by-device approach to RF emissions evaluation and agency guidance, it is current practice for POC manufacturers to provide the RTCA test compliance statements to the FAA.[9] Although

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[7] A 510(k) submission is a premarket submission made to FDA to demonstrate that the device to be marketed is at least as safe and effective, that is, substantially equivalent, to a legally marketed device (21 CFR 807.92(a)(3)) that is not subject to premarket approval. Submitters must compare their device to one or more similar legally marketed devices and make and support their substantial equivalency claims. If FDA makes a finding of substantial equivalence, the device is considered "cleared." Additional information regarding the 510(k) process is available at *www.fda.gov.*

[8] The term EMC was used throughout the NPRM however, EMC is a broad term used for installed aircraft electrical systems. Where appropriate, the FAA has replaced the term EMC with RF emissions in this final rule preamble because when a device-by-device examination of a PED is conducted, the operator would consider the RF emissions of that device.

[9] Currently, POC manufacturers provide the RTCA DO–160 Section 21 test qualification statements to the FAA; the FAA then makes the

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section 3(a)(1) of SFAR No. 106 places the burden upon the aircraft operator to assess the impact of a POC on the aircraft, the FAA has accepted as proof of non-interference, RF emissions test qualification statements (provided by POC manufacturers) that show a specific POC does not exceed certain maximum RF emissions thresholds established by RTCA in DO–160, Environmental Conditions and Test Procedures for Airborne Equipment.[10]

On October 31, 2013, the agency announced a new means of compliance with §§ 121.306, 125.204, and 135.144, allowing operators to expand the use of passenger supplied and operated PEDs throughout all phases of flight, based on a determination by the operator that the aircraft systems themselves are PED tolerant (*i.e.,* aircraft systems safety risk assessment showing the systems meet the requirements of RTCA DO–307 or another PED tolerance assessment). *See* Information for Operators (InFO) 13010 and InFO 13010SUP.[11] The agency does not, however, require aircraft systems safety risk assessment of PED tolerance in accordance with InFO13010 and InFO 13010SUP. These assessment methods provide one means for airplane operators to demonstrate compliance with §§ 121.306, 125.204, and 135.144 and allow PEDs to be used on board aircraft. It is up to each aircraft operator to determine whether to expand the use of passenger supplied and operated PEDs via a determination of PED tolerance for certain aircraft types. The FAA estimates that eighty percent of part 121 air carriers (which comprise an estimated 98% of total part 121 passenger enplanements in 2013) and several of the largest part 135 air carriers have expanded PED use according to InFO 13010 and InFO 13010SUP. The remaining operators continue to rely on individual PED evaluations.

In the NPRM, the agency proposed to require the RF emissions for each POC intended for use on board aircraft to be tested in accordance with RTCA DO–160G, Section 21, Category M. The agency also proposed to add POCs to the list of devices excepted from the general PED non-interference requirements in §§ 121.306, 125.204, and 135.144 to eliminate redundancy with the POC-specific non-interference requirements.

This final rule retains a POC-specific non-interference requirement, modified to reflect a performance-based standard. The Agency recognizes that the majority of operators conducting part 121 operations and several of the larger operators conducting part 135 operations have already conducted aircraft systems safety risk assessments for PED tolerance in accordance with InFO 13010 and InFO 13010SUP with results allowing for continuous use of PEDs from gate to gate. A determination that an aircraft is "PED tolerant" would make an independent assessment of RF emissions for any PED used on that aircraft unnecessary. Nevertheless, because of the need to ensure service for passengers who require oxygen therapy during air travel, the FAA believes it is necessary to maintain a regulatory structure to ensure that passengers may continue to use POCs on board aircraft even if the aircraft operator has not determined that the aircraft is "PED tolerant." Therefore, consistent with the SFAR and the NPRM, this final rule retains a requirement to assess POC RF emissions as one of the POC acceptance criteria. (The agency notes that POCs previously approved by the FAA for use on aircraft in accordance with SFAR No. 106 that demonstrated RF emissions below the maximum emissions threshold in DO–160G, Section 21, Category M would not need to be retested or reassessed by the operators prior to use on board aircraft because those prior assessments remain valid.)

Delta Air Lines generally supported inclusion of RTCA DO–160, Environmental Conditions and Test Procedures for Airborne Equipment, Section 21, Category M, in the proposed acceptance criteria. Recognizing, however, that FDA may require RF emissions assessments that may test to standards that could be used to demonstrate compliance with the FAA prohibition on PEDs interference with aircraft systems, the agency sought comment on whether POC manufacturers complete RF emissions assessments in accordance with requirements by other federal agencies that could also be used to demonstrate compliance with the generally applicable PED requirements. The agency did not receive any comments related to this specific issue except as provided by Delta. After further review of the proposal and other RF emissions assessments that POC manufacturers may conduct (*e.g.,* International Standards Organization (ISO) 7137 and the FDA recognized EMC standards for Class II medical devices in IEC 60601–1–2 edition 4.0), the agency has determined that the proposed requirement to use RTCA DO–160 as the only means by which to evaluate POC RF emissions was overly prescriptive.

Historically, the FAA identified RTCA DO–160 Section 21, Category M in guidance material for medical portable electronic devices intended for use on board aircraft. Although POCs are not installed aircraft systems, the agency identified RTCA DO–160 as one method to demonstrate compliance with the PED non-interference requirement because RTCA DO–160 establishes safe and conservative RF emissions limits for installed aircraft systems. The agency recognizes, however, that there are other methods to assess POC RF emissions and ensure that POC use will not cause interference with aircraft systems. Thus, this final rule includes a performance-based RF emissions acceptance criterion that allows POC manufacturers to determine how to assess whether their POC meets the aircraft system non-interference requirement before they affix a label to the device confirming that this criterion has been satisfied.

Guidance material in AC 91.21–1C identifies examples of methods appropriate to ensure compliance with this requirement, including RTCA DO–160 and other industry EMC standards identified in the AC. The FAA emphasizes, however, that FDA approval or clearance to market a POC does not necessarily mean that the POC complies with the FAA's aircraft system non-interference requirement.

In addition to Delta's comment, an individual commented that the POC manufacturer should include the electromagnetic interference test results on the POC label, eliminating the need for the air carrier to test the device. The agency clarifies that the purpose of the label is to identify those devices that conform to the FAA acceptance criteria. One of those criteria prohibits the POC from radiating radio frequency emissions that interfere with aircraft systems. Therefore, a device that bears the required label must also not radiate RF emissions such that it causes interference with aircraft systems. The POC manufacturer identifies devices that meet this and other criteria by affixing a label. In this way, the label indicates that the device will not radiate RF emissions that cause interference with aircraft systems and does not need to be retested by the aircraft operator. Thus, adding specific test results to the label would be unnecessary.

RTCA test qualification statements available on its Web site for aircraft operators to use to demonstrate compliance with section 3(a)(1) of the SFAR. The RTCA compliance statements may be viewed at *http://www.faa.gov/about/initiatives/cabin_safety/portable_oxygen/.*

[10] *See* AC 120–95, Portable Oxygen Concentrators. The FAA notes that while RTCA made significant changes to DO–160 since edition E was issued (December 9, 2004) and cited in agency guidance, Section 21, Category M (applicable to POCs) was not revised in either DO–160F or DO–160G.

[11] All InFOs can be found at *http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/.*

3. Hazardous Materials

SFAR No. 106 allows passengers to use one of the specific POCs identified in the SFAR only if the POC does not contain hazardous materials as determined by PHMSA.[12] *See* SFAR No. 106, section 2(1). The PHMSA determination required by SFAR No. 106 is one of the prerequisites that must be satisfied for the FAA to identify a POC in the SFAR. PHMSA issues this determination via a letter, at the request of the POC manufacturer and after PHMSA reviews manufacturer-supplied information regarding the POC.

POCs typically operate using either rechargeable batteries (usually lithium ion) or AC/DC electrical power via an external power cord. Although the POC units themselves are not considered hazardous materials, the lithium ion batteries typically used to power POCs are hazardous materials.[13] *See* 49 CFR 172.101, Hazardous Materials Table. However, lithium ion batteries are conditionally excepted from certain requirements of the HMR (*e.g.* UN specification packaging and labeling) if they meet certain size limitations (100 Wh), package limitations, and comply with package marking and battery testing conditions of the HMR. *See* 49 CFR 173.185(c). These exceptions only apply when the POC units are transported as cargo.[14]

Other HMR exceptions are provided in 49 CFR 175.10 that apply to POC units containing lithium ion batteries and associated spare batteries when carried on board aircraft by passengers and crewmembers. *See* 49 CFR 175.10(a)(18). In accordance with the exceptions in § 175.10(a)(18), passengers may bring an unlimited number of lithium ion batteries up to 100 Wh per battery to power their POC. Further, as a result of recent amendments, § 175.10(a)(18) also authorizes the aircraft operator to allow passengers and crewmembers to carry on board as spares up to two batteries that are larger than 100 Wh but do not exceed 160 Wh only if certain criteria are met.[15]

The PHMSA determination letters required by the SFAR were limited to a determination regarding the HMR exceptions for a POC unit containing small lithium ion batteries (*i.e.,* 100 Wh or 8g equivalent lithium content or less) for transportation as cargo as these are the exceptions that would apply to a manufacturer for transportation of a POC unit from the point of manufacture to the point of retail sale (although the size limits that distinguish a small lithium ion battery are the same for both the transportation of such batteries as cargo as well as for the passenger and crewmember exceptions). Existing PHMSA determinations for SFAR-approved POCs, however, do not include an assessment of each individual air carrier's policies pertaining to the allowance for larger batteries carried as spares.

Consistent with the proposal in the NPRM, this final rule eliminates the SFAR No. 106 provision requiring a PHMSA determination that the POC does not contain hazardous materials. Instead, this final rule prohibits POCs used on board aircraft from containing hazardous materials subject to the HMR and references the HMR. Further, as noted above, POC users may carry an unlimited number of small spare lithium ion batteries (*i.e.,* lithium ion batteries up to 100 Wh per battery) and up to two larger spare lithium ion batteries (*i.e.,* batteries larger than 100 Wh but that do not exceed 160 Wh) in accordance with the exceptions for hazardous materials carried by aircraft passengers and crewmembers as is the case today.[16] *See* 49 CFR 175.10(a)(18).

There is no safety basis for requiring the PHMSA "no hazardous materials" determination letter as a prerequisite to the use of a POC on board an aircraft. The HMR conditional exceptions provided in §§ 175.10 and 173.185 apply to passengers, crew and the POC manufacturer, respectively, independent of the SFAR and this final rule. Further, the FAA does not require a PHMSA determination letter prior to passenger carriage of any other PED that may contain hazardous materials and POCs do not present any unique hazardous materials safety issues that would be mitigated by the requirement to obtain a PHMSA determination letter.

Pursuant to 49 CFR 175.10(a)(18), passengers seeking to use a POC powered by a spare lithium ion battery that is over 100 Wh but less than 160 Wh are permitted to do so only with the approval of the operator. Given that the POC manufacturer cannot assume knowledge of and approval by each carrier regarding passenger and crewmember carriage of larger batteries, under this final rule, a POC manufacturer will be unable to label a POC as conforming to the final rule acceptance criteria if the POC has an installed lithium battery larger than 100 Wh. The final rule regulatory text clarifies the conditions under which POCs used on aircraft may contain batteries as a power source, including this limitation. Nonetheless, the passenger is ultimately responsible for compliance with the exceptions in § 175.10(a)(18) for spare batteries used to power a POC. For example, if a passenger wants to bring a spare lithium ion battery larger than 100 Wh into the aircraft cabin to power a POC unit, the passenger is responsible for compliance with § 175.10(a)(18) and reviewing airline acceptance policies.

A manufacturer must only affix a label to a POC powered by an installed lithium ion battery that does not exceed 100 Wh because the manufacturer cannot ensure compliance with the 49 CFR 175.10(a)(18) condition under which a passenger may carry and use a battery that exceeds 100 Wh (*i.e.,* approval by an aircraft operator with which a passenger may choose to fly). Adhering to this limitation will facilitate passenger carriage and use of POCs on board aircraft and ensure that there are no restrictions on the number of spare lithium ion batteries less than 100 Wh that can be carried on board the aircraft for full operability of the POC throughout the duration of the flight(s).

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[12] PHMSA is responsible for regulating and ensuring the safe and secure movement of hazardous materials by all modes of transportation, including aviation. To minimize threats to life, property or the environment due to hazardous materials related incidents, PHMSA's Office of Hazardous Materials Safety develops the HMR and standards for classifying, handling and packaging shipments of hazardous materials within the United States.

[13] 49 CFR 105.5 defines a hazardous material as a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has been designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.

[14] The PHMSA final rule, Hazardous Materials: Transportation of Lithium Batteries, recently removed 49 CFR 172.102(c)(1), *Code/Special Provision* 188 and relocated it, in part to 173.185. *See* (79 FR 46012, (August 6, 2014)). Currently, conditional exceptions for the transportation of small batteries as cargo can be found in 49 CFR 173.185.

[15] The revisions to the HMR exceptions for hazardous materials carried by aircraft passengers and crewmembers have resulted in a more conservative approach to the carriage of lithium ion batteries used to power PEDs than the previous requirements under 49 CFR 175.10(a)(18)(2014 ed.). The current passenger and crewmember exceptions include a new requirement for approval by the air operator for the carriage of spare lithium ion batteries larger than 100 Wh (approximately 8 grams) and have reduced the maximum Watt-hours for spare lithium ion batteries from 300 Wh (approximately 25 grams) to 160 Wh.

[16] The NPRM discussion regarding the SFAR limitation on hazardous materials took an overly conservative approach in the discussion pertaining to limitations on spare batteries carried by aircraft passengers and crewmembers.

Finally, although the FAA did not receive any comments regarding its proposal to remove the requirement for a PHMSA determination of no hazardous materials, the agency notes that an individual commented that the rules pertaining to lithium ion batteries must be updated, citing potential lithium ion battery hazards. The agency finds that revisions to the requirements applicable to passenger carriage of lithium ion batteries generally, are outside of the scope of the proposal because the proposal was narrowly tailored to address only POC carriage and use on aircraft. Further, PHMSA recently updated the requirements applicable to lithium ion batteries as part of a comprehensive rulemaking addressing the transportation of lithium batteries. *See* 79 FR 46012 (August 6, 2014). As a result of this update, PHMSA regulations pertaining to lithium ion batteries are now harmonized with the International Civil Aviation Organization (ICAO) Technical Instructions for the Safe Transportation of Dangerous Goods by Air. Through the rulemaking process, PHMSA determined that harmonization with the ICAO Technical Instructions pertaining to lithium ion batteries used to power PEDs carried by passengers and crewmembers on aircraft provides an appropriate level of safety.

4. Maximum Oxygen Pressure

As previously discussed, the SFAR No. 106 approval process requires POC manufacturers to obtain a PHMSA determination letter stating the POC device does not contain any hazardous materials. As part of this determination, PHMSA reviews information provided by the POC manufacturer regarding the oxygen pressure generated by a POC. If the POC generates oxygen pressure of 200 kPa gauge (29.0 psig/43.8 psia) or greater at 20 °C (68 °F), PHMSA would classify the POC as an article containing Hazard Class 2, Division 2.2 (non-flammable, non-poisonous compressed gas) and the POC would be subject to the applicable HMR (49 CFR 173.115). However, a POC does not contain a compressed gas subject to the HMR if it generates an oxygen pressure below this threshold.

In the NPRM, the agency proposed to include as a POC acceptance criterion a design limitation that would restrict POCs used on aircraft from generating a maximum oxygen pressure of 200 kPa gauge (29.0 psig/43.8 psia) at 20 °C (68 °F), or more. The agency did not receive any comments on this proposal.

The final rule includes the proposed POC design limitation as one of the POC acceptance criterion so as to ensure that newly manufactured POCs used on board aircraft will continue to incorporate this existing design limitation, thus ensuring that POCs will not present the hazards associated with devices that generate compressed oxygen. Accordingly, as proposed, the final rule establishes a maximum oxygen pressure allowed for POCs intended for use on board aircraft.

A POC designed to generate a maximum oxygen pressure of 200 kPa gauge (29.0 psig/43.8 psia) at 20 °C (68 °F), or more, would constitute a hazardous material and thus be subject to the HMR. As such, it must not be labeled as meeting the standards for use on board aircraft.

The agency has determined that inclusion of the requirement regarding oxygen pressurization does not overlap with 49 CFR 173.115 or the general prohibition on hazardous materials in this final rule, because it applies a design standard regarding the operation of the device. Further, it addresses concentrated oxygen that falls below the pressure threshold for the definition of compressed gasses subject to 49 CFR 173.115.

D. Manufacturer Label

The FAA does not currently require POCs to bear a label indicating FAA approval and compliance with the SFAR. Aircraft operators, crewmembers, and passengers must identify POCs approved for use on aircraft by reviewing the list of FAA-approved devices in the SFAR.

In the NPRM, the FAA proposed to require POCs that satisfied the proposed acceptance criteria and were intended for use on aircraft to bear a label indicating that the device satisfies these criteria as a condition of its carriage and use on aircraft. However, the NPRM excluded SFAR-approved POCs from the labeling requirement.

The FAA also proposed specific label attributes. The proposed label would be required to contain the following statement in red text: "The manufacturer of this portable oxygen concentrator has determined this device conforms to all applicable FAA requirements for portable oxygen concentrator carriage and use on board aircraft." Finally, the agency proposed that the label would have to be applied in a manner to ensure it remains affixed for the life of the POC.

Identification of POCs that satisfy acceptance criteria: The agency sought comment on the potential safety benefits and associated burdens of extending the proposed labeling requirement to all POC models currently identified in SFAR No. 106—existing and newly manufactured or just newly manufactured. Several commenters expressed concern regarding the exclusion of existing SFAR-approved POCs from the proposed POC labeling requirement. A4A, the Mayo Clinic and two individuals commented that the labeling requirement should extend to all POC models that may be used on board aircraft (those that are currently identified in SFAR No. 106 and those subsequently determined by their manufacturers to satisfy the proposed acceptance criteria).

The individuals cited concern regarding potential confusion due to the two methods (*i.e.*, review label and review list of SFAR-approved POCs) by which to identify POCs that may be used on aircraft as the basis for requiring all POCs to be labeled. The Mayo Clinic suggested that POC manufacturers could retrofit existing SFAR-approved devices through an inexpensive labeling method such as a sticker to resolve its concerns about potential health care provider confusion regarding which POCs may be used on aircraft.

A4A noted that air carrier employees with responsibility for determining device acceptability should be able to make this determination efficiently, without having to refer to the CFR. A4A also stated that its comments on extending the labeling requirement to POCs approved under the SFAR should only be applied to newly manufactured POCs because retrofitting existing devices would be unreasonably burdensome.

Philips Respironics objected to the extension of the labeling requirement to existing SFAR-approved POCs citing a significant burden and stating that passengers and aircraft operators would have sufficient means by which to identify POCs that may be used on board aircraft.

The final rule retains the proposal to label POCs that have not been previously identified in SFAR No. 106 as approved for use on aircraft. SFAR-approved POCs will continue to be identified in §§ 121.574, 125.219, and 135.91.

The labeling requirement provides a simple, efficient and effective method by which to identify POCs that may be used on aircraft. In order to determine whether a POC may be used on an aircraft, a POC user or an aircraft operator need only examine the POC to determine whether it bears the label required by this final rule. As is the case today, for those POCs that do not bear the required label, a POC user and aircraft operator need only verify that the model is identified in the regulatory text—the same process that is currently used to identify SFAR-approved POCs.

The FAA maintains that it is not necessary or practical to require POC manufacturers to label POCs previously identified in SFAR No. 106 as approved for use on board aircraft. POC models previously identified in SFAR No. 106 as approved for use on board aircraft have satisfied the SFAR No. 106 criteria and would also satisfy the proposed acceptance criteria. Further, the FAA expects that the use of SFAR-approved POC models will lessen over time as those POCs age and their users replace those older models with newer ones, obviating the need to retrofit existing SFAR-approved POC models with a label.

Although the agency appreciates the intent of the Mayo Clinic's comment regarding a "bridging strategy" by which adhesive stickers could be used to identify previously manufactured SFAR-approved POCs, a label used to satisfy the requirements of this final rule must be sufficiently durable so as to remain affixed to the POC for the life of the device and prevent the transfer to another type of oxygen dispensing device, such as a device that uses compressed oxygen.

In comments related to the identification of SFAR-approved POCs, Delta Air Lines suggested that the list of SFAR-approved POCs provided in the proposed regulatory text was incomplete because it did not identify all devices that the FAA previously approved in accordance with the SFAR. The list of SFAR-approved POCs identified in the proposed and final rule regulatory text is identical to the list of POCs identified in SFAR No. 106. The agency stresses that SFAR approval is device-specific. For instance, while the SFAR identifies the SeQual Eclipse as approved for use on aircraft, the approval does not extend to any other variants of SeQual Eclipse models that were not specifically reviewed and approved for use on aircraft by the FAA and identified in the SFAR. Thus, only those specific POCs identified in the SFAR by manufacturer and model name are currently approved for use on aircraft. This final rule continues to identify those SFAR-approved devices as they appear in the SFAR, since those SFAR-approved POCs need not bear a label as a condition of their use on aircraft.

Delta Air Lines further commented that the FAA should update the list of POCs approved under SFAR No. 106 with the names of all POCs currently under review by the FAA, in accordance with the SFAR prior to publication of the final rule. This final rule includes a list of all POCs approved by the FAA under the SFAR.

FAA identification of POCs that satisfy acceptance criteria: Several commenters raised issues related to the FAA listing of POCs that satisfy the FAA acceptance criteria. A4A suggested that the FAA maintain a list of POC devices that meet the FAA's proposed acceptance criteria to keep industry and the public updated with compliant POCs. A4A further explained that the FAA should maintain a list of POCs that meet the acceptance criteria because of challenges for aircraft operators in determining whether a POC satisfies the acceptance criteria, especially in the instance in which a manufacturer incorrectly labels a device.

The FAA disagrees with A4A's comment that unless the FAA maintains a list of POCs that satisfy the acceptance criteria, POC identification will be unnecessarily burdensome. The process of examining a POC to determine whether it bears a label is less burdensome than the existing process of examining a POC to identify the model name and then verifying that the model is identified in the SFAR. In either case, a crewmember of an aircraft operator must examine the POC.

A4A also recommended that the FAA maintain a list of POCs that are labeled as conforming to FAA requirements for POC use on board aircraft to track POCs that are subsequently determined to be non-compliant. However, the FAA has alternate appropriate methods by which to notify aircraft operators in the unlikely event that a POC intended for use on aircraft is no longer compliant with FAA requirements. For example, the FAA can provide such notice through a Safety Alert for Operators (SAFO) or an InFO, as appropriate. All SAFOs and InFOs are made available on the agency's Web site.

Label attributes: The final rule requires the label to contain the following statement in red text: "The manufacturer of this POC has determined this device conforms to all applicable FAA requirements for POC carriage and use on board aircraft." The purpose of this verbiage is to facilitate identification of devices that conform to the acceptance criteria and the red color is expected to draw attention to the text.

Consistent with the NPRM, this final rule also requires a labeling method that ensures the label remains affixed to the POC for the life of the device. The purpose of this requirement is to ensure the label is durable and cannot be transferred to another type of oxygen dispensing device (such as a device that uses compressed oxygen).

Several commenters suggested changes related to the proposed label that would standardize label features in addition to the proposed required text and color. A4A commented that the FAA should mandate additional specific label attributes so that labels are identical and can be easily recognized by gate agents.

Philips Respironics commented that the proposed label text is overly burdensome due to the length of the text and the color requirement. This commenter proposed an alternate label that states, "Complies with FAA requirements for airline use" and includes an airplane graphic. Together with this alternate label, Philips Respironics suggested a POC manual update to further describe the label. Main Clinic Supply supported the label example included in the Philips Respironics comment.

The agency has considered comments regarding additional standard label features but has determined that it is unnecessary to require standardized features beyond the proposed label verbiage and text color. The use of red text is sufficient to draw attention to the label identifying a POC that may be carried and used on board an aircraft.

The specific label language proposed in the NPRM and included in this final rule is necessary to facilitate the identification of the device as a POC that satisfies the acceptance criteria for POCs intended for use on board aircraft. A more generic or general label such as the label proposed by Philips Respironics and supported by Main Clinic Supply would not effectively serve this purpose. The agency is aware that manufacturers of some POC models approved under SFAR No. 106 may have voluntarily applied labels similar to the label recommended by Philips Respironics and Main Clinic Supply. The FAA determined, however, that the label proposed by commenters could hinder a passenger's ability to use an SFAR-approved POC by introducing confusion into the POC identification process due to multiple similar labels (*i.e.*, labels currently affixed to some SFAR-approved POCs and the label proposed by commenters). The only label that may be used to determine compliance with this final rule and to ascertain whether a POC may be used on board an aircraft is a label that exhibits the verbiage and color criteria specifically provided in this final rule.

Further, the FAA analyzed the costs associated with the NPRM labeling requirement and estimated that the requirement would not result in a significant burden. Commenters did not challenge the FAA assumptions that provide a basis for the estimate of the labeling costs in the NPRM. Given that the final rule label verbiage includes only minimal changes from the proposed label verbiage, the final rule is not expected to result in a significant burden to POC manufacturers.

Additionally, the FAA notes that, although the agency supports the Philips Respironics comment regarding POC manufacturer manual updates to describe the label, it would reach beyond the scope of the proposal for the FAA to require POC manufacturers to include additional information in the POC user manual. However, the FAA encourages manufacturers to inform POC users of issues pertaining to POC use on board aircraft.

Finally, A4A commented that if the POC acceptance criteria were to change, the FAA should change the label requirements to distinguish those POCs that meet the new acceptance criteria from those that do not meet the new acceptance criteria. The agency will consider this comment if it finds that a future rulemaking is required to revise POC acceptance criteria.

E. Manufacturer Determination of Conformance to Acceptance Criteria

Two individuals questioned whether the FAA should rely on POC manufacturers to determine that a POC is safe and fits within the regulatory requirements. One of the individual commenters recommended that POC manufacturers demonstrate compliance with the acceptance criteria to the FAA before labeling the device as satisfying those criteria. In a related comment, Delta Airlines recommended that the FAA should require POC manufacturers to provide airlines with the data that demonstrates compliance with the acceptance criteria at the airlines' request.

The FAA employs a range of oversight approaches throughout title 14. The process in this final rule that allows manufacturers to self-certify that their POC conforms to all applicable requirements for use on board aircraft and to affix a label that can be reviewed by aircraft operators and passengers is consistent with other existing agency oversight practices. For example, child restraint system (CRS) manufacturers self-certify (via a label) that their CRS meets all applicable performance criteria and is approved for use on aircraft. In another example, the Technical Standard Order (TSO) program involves a process where a manufacturer makes statements of conformance to the standards in a particular TSO for many different types of articles used on aircraft.

In the case of POCs, the FAA has determined that the devices present minimal risk to aircraft operations. Additionally, the proposed and final rule acceptance criteria for POCs leverage existing regulatory requirements that are applicable to POCs and relevant to the safe carriage and use of POCs, including the use of POCs on board aircraft. The purpose of the label applied by POC manufacturers is to facilitate aircraft operator and passenger identification of devices that meet the acceptance criteria required for POCs intended for use on board aircraft.

Accordingly, a case-by-case POC approval process is unnecessarily burdensome to mitigate any potential risk presented by POCs. An aircraft operator seeking specific information regarding a POC may reach out to a POC manufacturer without FAA regulation. The agency also notes that POC user manuals and POC manufacturer Web sites also provide information pertaining to the attributes and functions of the associated POCs.

F. Prohibition on Smoking or Open Flame

SFAR No. 106 prohibits smoking or open flame within 10 feet of any person using a POC. In the NPRM, the agency proposed to retain this restriction. The agency did not receive any comments on the proposal to retain the SFAR prohibition on smoking or open flame near a person using a POC. Accordingly, the final rule includes this proposal without change.

Although the risk posed by concentrated oxygen is minimal when generated at a pressure below that which would trigger the application of the HMR, given the unique environment of an aircraft, the agency has determined that it is reasonable to provide an additional margin of safety by prohibiting smoking or open flame in the vicinity of a person using a POC. Accordingly, the agency will maintain the existing prohibition on smoking or open flame within 10 feet of a person using a POC by extending the smoking prohibitions in existing §§ 121.574, 125.219, and 135.91 to POCs and adding language to specifically prohibit an open flame.

The smoking prohibition in existing §§ 121.574, 125.219, and 135.91 effectively results in a prohibition on an open flame. However, given the risks created by smoking near a person using medical oxygen and the storage of such oxygen, in this final rule the agency will ensure that this restriction is clear by explicitly prohibiting an open flame in addition to smoking.

Finally, as proposed, this final rule amends the regulatory text in § 125.219(b) to prohibit smoking not only within 10 feet of where medical oxygen is being used but also within 10 feet of where it is stored. This amendment is consistent with the preamble for the final rule issuing § 125.219 as well as the prohibitions on smoking within 10 feet of the location of medical oxygen storage or use in §§ 121.574 and 135.91. *See* 45 FR 67214, 67230 (October 9, 1980).

G. Operational Requirements

1. Exit Seats

Section 3(a)(4) of SFAR No. 106 prohibits a person using a POC from sitting in an exit row. The FAA proposed to eliminate this SFAR No. 106 provision from the final rule.

AFA and an anonymous commenter recommended that the FAA retain the provision in SFAR No. 106 prohibiting a passenger from using a POC while sitting in an exit row. Both commenters noted that POC tubing would create obstacles in the exit row. AFA stated that generally, certificate holders should have the responsibility for determining the suitability of passengers who occupy exit seats; however, they maintained that an explicit restriction on exit row seating would eliminate any ambiguity about a POC user's ability to assist in an emergency.

The FAA agrees with commenters in that a passenger's ability to perform exit row functions could be impeded by the presence of the device, possibly creating a tripping hazard and an obstacle to egress. Thus, although §§ 121.585 and 135.129 require the certificate holder to determine the suitability for passengers it permits to occupy exit seats, the final rule retains the SFAR No. 106 provision prohibiting passengers using a POC from sitting in exit seats to eliminate any potential ambiguity pertaining to whether a passenger using a POC may occupy an exit seat.

2. Stowage of Portable Oxygen Concentrators

SFAR No. 106, section 3(a)(3) states that during movement on the surface, takeoff, and landing, the POC must either be stowed under the seat in front of the user, or in another approved stowage location, so as not to block the aisle way or entryway into a row. Further, SFAR No. 106 limits the location of POC use to a seat location that does not restrict any passenger's access to, or use of, any required emergency or regular exit, or the aisle(s) in the passenger compartment. However, FAA regulations in parts 121, 125, and 135, also address the stowage of carry-on items and carriage of cargo in the passenger cabin to ensure an appropriate stowage location and that emergency exit row access is not hindered by carry-on items or cargo. *See* §§ 121.285, 121.589, 125.183, and 135.87. Thus, the FAA proposed to eliminate the POC stowage requirement in SFAR No. 106.

AFA recommended that the FAA retain the requirements in section 3(a)(3) of SFAR No. 106 that pertain to POC stowage. AFA stated that, for consistency with existing medical oxygen rules that require certificate-holder provided equipment to be "appropriately secured," (§§ 121.574, 125.219 and 135.91) the final rule regulatory text should continue to address stowage requirements for passengers' POCs. The commenter stated that some operators might conclude that only devices furnished by the certificate holder are required to be secured or stowed unless POC stowage is specifically addressed.

Although the FAA continues to expect that POC stowage will be addressed in an operator's carry-on baggage program in accordance with the requirements of 14 CFR 121.285, 121.589, 125.183 and 135.87, the FAA agrees with the commenter that retaining and specifically addressing POC stowage (and thereby reinforcing POC stowage requirements) could increase the likelihood of safe stowage of passenger supplied POCs. Accordingly, as found in SFAR No. 106, this final rule includes a specific requirement for POCs to be stowed during movement on the surface, takeoff, and landing.

Notably, the user manuals for 18 of the POC models currently approved under SFAR No. 106 specify oxygen tube length. Every manual specifying oxygen tube length indicates the associated POC has at least 7 feet of tubing, which is long enough to allow a passenger to use a device stowed under a seat.

H. Discussion of Special Federal Aviation Regulation No. 106 Requirements Excluded From Final Rule

The FAA has determined that many of the requirements included in SFAR No. 106 are overly prescriptive or redundant with existing rules and are therefore not necessary. Accordingly, the FAA has not retained them in this final rule. A discussion of the SFAR No. 106 requirements excluded from this final rule follows.

1. Special Federal Aviation Regulation No. 106 Requirements Addressed in Existing Regulations

a. Passenger Movement About the Cabin While Using a Portable Oxygen Concentrator

SFAR No. 106, section 3(a)(6) states that when the PIC turns off the "Fasten Seat Belt Sign," or otherwise grants permission to move about the passenger cabin, passengers may continue to use their POC while moving about the cabin. The agency included this provision in SFAR No. 106 in response to commenters' concerns that the agency should allow passengers using a POC to operate the device for the entirety of the flight, if necessary. Therefore, in the final rule implementing SFAR No. 106, the agency stated that passengers are allowed to use a POC for the duration of the flight, including during movement on the surface, takeoff, and landing. The agency also stated that once passengers were allowed to move about the cabin of the aircraft, they would be allowed to bring the POC with them. *See* 70 FR at 40159.

In the NPRM, the agency proposed to remove section 3(a)(6) of the SFAR. Section 3(a)(6) of the SFAR is unnecessary because there are no regulations directed at passengers using a POC that would limit their movement about the cabin when passenger movement is permitted by the PIC. Accordingly, as proposed in the NPRM, the final rule does not include a provision similar to section 3(a)(6) of the SFAR. The agency did not receive any comments on the proposed elimination of this SFAR No. 106 provision.

b. Protection of Batteries From Short Circuit

SFAR No. 106, section 3(b)(6) requires passengers to ensure all POC batteries carried on board the aircraft in carry-on baggage are protected from short circuit and packaged in a manner that protects them from physical damage. Batteries protected from short circuit include: (1) Those designed with recessed battery terminals; or (2) those packaged so that the battery terminals do not contact metal objects (including the battery terminals of other batteries). Additionally, when a passenger carries a POC on board an aircraft as carry-on baggage, and does not intend to use the POC during the flight, the passenger must remove the battery and package it separately unless the POC contains at least two effective protective features to prevent accidental operation and potential overheating of the battery within the POC during transport.

The FAA proposed to eliminate the SFAR No. 106 provisions applicable to spare batteries carried by passengers on board aircraft for use in POCs because they are unnecessary. The portion of SFAR No. 106, section 3(b)(6) addressing spare batteries is redundant with PHMSA regulations applicable to spare lithium batteries carried by passengers on board aircraft. *See* 49 CFR 175.10(a)(18).

A4A commented that the FAA should strongly recommend that POC manufacturers include a carrying case for spare lithium battery packs to ensure battery isolation and insulation. The FAA supports any action a POC manufacturer takes to facilitate passenger, crewmember, and operator compliance with the requirements for the safe carriage of lithium ion batteries on board aircraft, including spares. However, the agency does not agree that the commenter's recommendation is necessary because PHMSA has identified the requirements for safe carriage of spare lithium batteries used to power all PEDs carried by aircraft passengers or crewmembers. *See* 49 CFR 175.10(a)(18).

PHMSA requires all lithium batteries to be of a type proven to meet the requirements of each test, including Test T.7 (Overcharge), in Part III, Sub-section 38.3 of the UN Manual of Tests and Criteria. *See* 49 CFR 173.185 and 175.10(a)(18). Additionally, PHMSA requires spare lithium batteries carried on board aircraft to be carried in the cabin in carry-on baggage and individually protected from short circuit to mitigate the risk of a fire during flight (*e.g.*, by placement in original retail packaging, by otherwise insulating terminals by taping over exposed terminals, or by placing each battery in a separate plastic bag or protective pouch). *See* 49 CFR 175.10(a)(18).

The agency notes that the SFAR diverges from PHMSA requirements pertaining to installed batteries. *See* 49 CFR 175.10(a)(18). The SFAR requires a passenger to remove a POC battery if the device does not have at least two features that prevent accidental operation. The HMR, however, do not require an installed battery to be removed from any PED, which would include a POC that is not in use. *See* 49 CFR 175.10(a)(18).

Based on the analysis of currently approved POCs and PHMSA requirements applicable to lithium ion batteries carried by passengers and crewmembers to power PEDs, an independent FAA requirement for two protective features as a prerequisite to leaving an installed battery in a POC is unnecessary. The agency reviewed the

24 SFAR-approved POCs and determined those POCs all have at least two design features preventing inadvertent or accidental operation. Thus, batteries may remain in SFAR-approved POCs while those POCs are not in use.

In addition, current PHMSA regulations address the safe transportation of lithium ion batteries as well as passenger carriage of lithium ion batteries. Lithium batteries must be of a type proven to meet the requirements of each test, including Test T.7 (Overcharge), in Section 38.3 of the UN Manual of Tests and Criteria. *See* 49 CFR 173.185.

Based on the analysis of SFAR-approved POCs and the applicable HMR, an independent FAA requirement for two protective features as a prerequisite to leaving an installed battery in a POC is unnecessary. All POCs currently used on board aircraft are equipped with two protective features and all lithium ion batteries must be designed to satisfy the overcharge test protection, therefore, the risk of a fire originating from the battery is minimal. Accordingly, this final rule eliminates SFAR No. 106, section 3(b)(6) from title 14.

2. Special Federal Aviation Regulation No. 106 Requirements Excluded in Their Entirety

a. Physician Statement and Pilot in Command and Aircraft Operator Notification Requirements

Section 3(b)(3) of SFAR No. 106 requires passengers intending to use a POC to have a written statement signed by a licensed physician, and kept in that person's possession that states whether the user of the device has the physical and cognitive ability to see, hear, and understand the device's aural and visual cautions and warnings and is able, without assistance, to take the appropriate action in response to those cautions and warnings; states whether or not oxygen use is medically necessary for all or a portion of the duration of the trip; and specifies the maximum oxygen flow rate corresponding to the pressure in the cabin of the aircraft under normal operating conditions.

Section 3(b)(3) of SFAR No. 106 further requires a passenger to inform the aircraft operator that he or she intends to use a POC on board the aircraft and to allow the crew of the aircraft to review the contents of the physician's statement. Similarly, section 3(a)(5) of SFAR No. 106 requires PIC notification whenever a passenger brings and intends to use a POC on board the aircraft. The PIC must be apprised of the physician's written statement required by section 3(b)(3) of the SFAR including the nature of the passenger's oxygen needs and the passenger's ability to understand operational and warning information presented by the POC.

As proposed, the FAA will no longer require POC-using passengers to present a physician's statement, to notify the aircraft operator and PIC of their intended POC use, to inform the PIC of the contents of their physician's statement, and, to allow the crew of the aircraft to review the content of their physician's statement. The FAA received comments related to these proposals from two POC suppliers (Main Clinic Supply and OTG), the Mayo Clinic, AMDA, and a number of individuals. The FAA has reviewed and considered all comments regarding the physician's statement and pre-flight notification of POC use.

Physician statement: Two individual commenters supported the FAA proposal to relieve passengers from obtaining a physician's statement as a condition of their use of a POC on aircraft. Main Clinic Supply supported the proposal to relieve passengers from having to provide a physician statement commenting that the current requirement for a written, signed physician statement for every flight is not practical, causes many delays, and may inhibit POC users' air travel. Main Clinic Supply also stated that physicians and their staff do not have the resources to provide POC training to patients, explaining that the POC user must be responsible for reading the POC operating manual and asking the necessary questions of their oxygen provider.

OTG, AMDA, the Mayo Clinic, and some individual commenters did not support the FAA proposal to remove the requirement for passengers to carry a physician's statement as a condition of POC use on aircraft. OTG, AMDA, and some individual commenters indicated that removal of the existing physician's statement and notification requirements would cause diversions, impact passenger travel, and be costly to the airlines. Generally, commenters asserted that the FAA should retain the SFAR No. 106 requirement for a physician's statement because it ensures that passengers seeking to use a POC on board an aircraft have consulted with a physician regarding POC use in the aircraft environment prior to travel. Commenters also challenged statements in the NPRM regarding POC function in the aircraft environment.

The Mayo Clinic commented that it is particularly important for individuals who have "poor respiratory reserve" to have health care provider oversight. In this regard, the physician statement is a form of "safety net" to trigger these conversations between passengers and their treating providers. It is critical that these conversations occur prior to air travel since decompensation on board a flight may require urgent response. OTG and some individual commenters commented that additional interaction between a POC user and his or her physician is necessary to educate passengers with limited experience with POC use; to address discrepancies between the POC prescription and the POC provided by a supplier; and to help the POC user account for the effects of cabin pressurization on POC use.

OTG indicated in its comments that the flow rate on a POC prescription may not be appropriate for cabin altitudes. In a related comment, the Mayo Clinic stated, "[A]lthough a physician or other health care provider with prescribing privileges writes prescriptions for devices to deliver supplemental oxygen, many providers are unfamiliar with the physiology of altitude." OTG also commented that, in its experience, a large percentage of physicians and the majority of passengers incorrectly assume aircraft cabins are pressurized to sea level. OTG stated that based on this assumption, physicians do not provide their POC-using patients with recommendations regarding oxygen flow adjustments during air travel when most will require higher flow rates in a pressurized cabin than at sea level. OTG further asserted that the POC will not produce the same percentage of oxygen in a pressurized cabin and the oxygen saturation level of the passenger will be decreased due to the normal physics of the partial pressure of the oxygen on pulmonary tissue.

The agency clarifies that SFAR No. 106 does not specifically require a passenger to obtain a new physician's statement prior to each flight. *See* 70 FR at 40161. Also, SFAR No. 106 does not require the physician's statement to account for the duration of a specific flight, variables that may arise in flight conditions, changes in a patient's oxygen needs over time, or variables that may arise in connection with an individual's medical condition. Further, commenters noted that not all physicians may be familiar with effects of cabin pressure or realize that aircraft are not pressurized to sea level. For these reasons, while the SFAR No. 106 requirement for a physician's statement may result in a one-time conversation about a passenger's POC use on an aircraft at some point in time, the requirement to obtain such a statement may not provide the POC education and "safety net" expected by commenters.

The FAA appreciates and concurs with comments regarding the need for vigilance and understanding of all nuances associated with POC use on aircraft. The agency appreciates and has considered commenters' concerns about the physiology of flight and its relationship to POC use. The FAA emphasizes that pre-flight preparation on the part of the POC-using passenger, working closely with an appropriate medical professional, should always occur when traveling with any medical device. While preparation may differ for each POC-using passenger, depending on the aircraft and kind of operation included in his or her travel plans, passengers may wish to consider such factors with their medical professional such as past experience using a POC, cabin pressurization, layovers, length of flight, and pre-flight activities that could lead to compromised lung function in flight. The FAA also encourages POC-using passengers to carry documentation regarding the device they intend to use including any pertinent documentation provided to them by a medical professional or any medical certificate required by the carriers in accordance with the Department's air travel disability regulation in 14 CFR 382.23.

However, the FAA believes that retaining the SFAR No. 106 requirement for a physician's statement as evidence of this medical consultation is not the most effective education tool in those circumstances in which the physiology of altitude could come to bear on POC use and should not be relied on as the means to address the range of variables potentially affecting passengers using POCs during flight. The FAA has determined that it is more effective to provide reasoned guidance and public outreach to educate POC users and physicians regarding considerations pertaining to POC use during flight in a pressurized cabin. The FAA provides information on passenger health and safety on its Web site (*e.g., http://www.faa.gov/passengers/fly_safe/health/comprehensive/*). The FAA has also updated the POC-specific guidance in AC–120–95B and expects to update its Web site with information a passenger may want to consider when traveling with a POC.

As is the case with in flight use of any medical device, passengers who need to use a POC on board an aircraft should always consult with an appropriate medical professional and their chosen air carrier before traveling. Doing so ensures that passengers are prepared for each flight they take, particularly if, as one commenter noted a prescription may not address adjustments that may be appropriate for POC use on a pressurized aircraft. However, the FAA has determined that the specific, regulatory requirement set forth in the SFAR requiring POC-using passengers to obtain, present, and allow for scrutiny of a physician's statement, as a condition of admission on board an aircraft is particularly burdensome for passengers seeking to use a POC during air travel.

The FAA intended for the SFAR to provide a framework, not previously available, under which persons with a need to use personal oxygen therapy could use their own devices during a flight, thereby increasing accessibility to air travel for POC-using passengers. With more than 10 years of experience with POC technology and POC use on aircraft, the FAA has determined that the requirement for a passenger to provide for aircraft operator, crewmember, and PIC scrutiny, a physician statement pertaining to a medical device that the passenger is solely responsible for during the flight, was an overly conservative addition to the POC oversight framework. Removing the requirement to obtain a physician's statement affects a paperwork requirement; it does not affect passengers' responsibility to be prepared for travel. The purpose of this final rule is to continue to provide POC-using passengers access to air travel, while addressing device safety for aircraft use; it is not intended (and is not within FAA authority) to set forth a standard of medical care for POC-using passengers. Further, the FAA does not require passengers who supply any other medical device for their own use during a flight to provide a physician's statement as a condition of device usage during flight.

Additionally, as mentioned previously, existing DOT requirements in 14 CFR part 382 continue to include a provision to further mitigate the possibility of medical events including those that could result in a diversion. Sections 382.23(b) and 382.133 authorize carriers to require a passenger needing medical oxygen inflight to provide a medical certificate to ensure the passenger can complete the flight safely without requiring extraordinary medical assistance during the flight.

AMDA indicated that the FAA should conduct additional research regarding the potential impact of the elimination of the physician's statement. The FAA has determined that additional research is not necessary at this time because the FAA expects physician consultation to continue as appropriate for the use of any medical device, and that pre-flight notice of POC use on the aircraft will continue in light of the requirement for each aircraft operator to determine whether the POC bears the label required for use on board aircraft.

The purpose of the SFAR and the FAA's action in this final rule is to address continued use of POCs on aircraft without compromising the safety of the aircraft operation. The agency has determined the SFAR No. 106 requirement for a physician statement creates an unnecessary burden that may not ultimately serve the purpose contemplated by commenters. The FAA emphasizes that removing the requirement to obtain a physician's statement affects a paperwork requirement; it does not affect passengers' responsibility to be prepared for travel, including obtaining a medical certificate if the carrier chooses to require one as allowed by 14 CFR 382.23 and 382.133. All passengers using a medical device in an aircraft environment are responsible for preparing for the flight such that they can ensure that the device will function properly during the flight and provide the requisite medical support. Therefore, as proposed, this final rule discontinues the SFAR requirement for a physician statement.

PIC and aircraft operator notification: OTG, AMDA, and several individual commenters did not support the proposal to remove the requirements for pre-flight notification of the aircraft operator and PIC regarding POC use on board an aircraft. These commenters, however, did not provide specific reasons for maintaining the notification requirements. One anonymous commenter asserted that advance notice that a passenger expects to use a POC would allow crewmembers to prioritize actions during multiple cabin events.

Under this final rule, the PIC and aircraft operator (through a crewmember or gate agent) will continue to receive notice of a passenger's POC use during flight as the operator determines during pre-boarding procedures whether the device has the label now required for POC use on the aircraft. Accordingly, as proposed, the FAA discontinues the specific requirement for passengers to notify the aircraft operator and PIC of intended POC use during a flight because a specific notification requirement is unnecessary.

OTG also stated that several POC-related incidents have occurred in flight but did not provide any specific examples, information, or data regarding such diversions or incidents. OTG further stated that the FAA should have contacted "air-to-ground" medical service providers to document POC-related incidents.

The agency reviewed air carrier safety data collected from 2005 through 2014—a period of nearly 10 years—and found no instances of POC malfunction during flight or any related medical incident or diversion. This review included information from several accident, incident, and voluntary reporting databases.[17] Further, no "air-to-ground" medical service providers contacted the agency regarding any POC incidents, nor did they provide any comments to the agency in this regard during the open comment period.

Although the FAA is removing the requirement for pre-flight notification, under existing DOT requirements in 14 CFR part 382, carriers continue to be permitted to require individuals who wish to use a POC on aircraft to contact them 48 hours before scheduled departure. Carriers are permitted to require this pre-flight notification so they can ensure that a passenger knows the expected maximum flight duration and can use this information in determining the number of spare batteries that he or she will need to power the POC during the flight.

b. Portable Oxygen Concentrator Alarms

SFAR No. 106, section 3(b)(1) requires a passenger using a POC on board an aircraft to be capable of hearing the unit's alarms and seeing alarm light indicators. SFAR No. 106 also requires passengers using a POC to have the cognitive ability to take appropriate action in response to the various POC caution alarms, warning alarms, and alarm light indicators, or travel with someone capable of performing those functions.

In the NPRM, the FAA proposed to eliminate the requirement for a passenger using a POC on board an aircraft to be capable of hearing the unit's alarms and seeing alarm light indicators. An anonymous commenter stated that the FAA should retain this requirement because a continuous audio alarm could be very disruptive and compound other abnormal events occurring in the cabin. The commenter added that the absence of alarm events over the last 10 years does not mean that an alarm event will not occur in the future. Additionally, OTG commented that in its experience, an individual may not be able to respond to alarms even if a physician states that the individual can respond to the POC alarms.

Crewmembers receive training on how to respond to unanticipated events that may arise on board the aircraft including disruptions in the cabin and other abnormal events. Further, it is a passenger's responsibility to read the POC operator's manual and direct questions to their physician to ensure understanding of oxygen flow settings and the appropriate responses to alarms.

The SFAR No. 106 requirements pertaining to POC alarms are based on information in the user manual of the first POC approved by the FAA. *See* 69 FR at 42325. Based on a review of 20 user manuals for POCs identified in SFAR No. 106, the agency has determined POC alarms may provide information regarding the general operation of the POC, as well as information regarding the power source and detection of the POC user's breath. Since these alarms help ensure the device functions as intended, the FAA believes that removing this requirement will not affect aviation safety.

The FAA also emphasizes that it has not identified any incidents regarding POC malfunctions on board aircraft during the period of time that POCs have been permitted on aircraft. A 10-year look-back period includes data from almost 78 million domestic flights with no adverse POC incidents. *See http://www.transtats.bts.gov/Data_Elements.aspx?Data=2.* The agency has determined that this is sufficient data to provide an appropriate indicator of future POC safety. Therefore, as proposed, this final rule eliminates the SFAR No. 106 requirement pertaining to alarms (section 3(b)(1)).

c. Ensuring the Portable Oxygen Concentrator is Free of Petroleum Products

SFAR No. 106, section 3(b)(2) requires a passenger using a POC to ensure the POC is free of oil, grease, or other petroleum products and is in good condition free from damage or other signs of excessive wear or abuse. This provision is similar to a warning statement found in the user manual of the first POC approved by the FAA and to a provision in the medical oxygen rules (§§ 121.574, 125.219, and 135.91). See 69 FR at 42325. The agency proposed to eliminate this SFAR No. 106 provision.

OTG commented that for passengers who rent their POCs, the condition of the device and its batteries is dependent on the purveyor of the equipment. The FAA expects POC users to ensure that a POC they intend to use is in good condition so that it may function properly to provide the needed oxygen therapy whether the POC user is on the ground or on an aircraft. Further, while petroleum products may accelerate an existing fire, the volume of petroleum products necessary to accelerate a fire is unlikely to be found on the exterior of a POC, and this concern is not addressed as a specific requirement for other PEDs carried on board aircraft. Therefore, this final rule eliminates the requirements in section 3(b)(2) of SFAR No. 106 because the requirements are unnecessary.

d. Use of Salves and Lotions

SFAR No. 106, section 3(b)(4) states only oxygen approved lotions or salves may be used by persons using a POC on board an aircraft. In the NPRM, the FAA proposed to eliminate this prohibition in its entirety and did not receive any comments on this proposal.

The requirement in SFAR No. 106, section 3(b)(4) came from the user manual of the first POC approved by the FAA. The FAA believes it is the passenger's responsibility to ensure he or she is using products that meet the POC manufacturer's requirements for salve and lotion usage with a POC. The risks and responsibilities associated with lotions or salves that are not oxygen approved or are petroleum-based are addressed in the preceding discussion on the elimination of the requirement for the user to ensure that the POC is free from petroleum products. Therefore, as proposed, this final rule does not retain the prohibition in section 3(b)(4) of SFAR No. 106.

e. Carriage of a Sufficient Number of Batteries

SFAR No. 106, section 3(b)(5) requires passengers intending to use a POC during a flight to obtain from the aircraft operator, or by other means, the duration of the planned flight and carry a sufficient number of batteries to power the device for the duration of the oxygen use specified in the passenger's physician statement, including a conservative estimate of any unanticipated delays. In the NPRM, the agency proposed to eliminate this SFAR No. 106 requirement.

Delta Air Lines commented that this final rule should retain the battery carriage requirements found in SFAR No. 106 and current 14 CFR 382.133(f)(2) because passengers often mistakenly assume that electrical outlets are available to power portable medical devices. The FAA is not aware of any specific incidents of confusion regarding availability of electrical outlets to power POCs. FAA guidance (AC 120–95B as well as previous editions of this AC) addresses aircraft operator and passenger issues pertaining to the use of electrical outlets to power POCs. Further, many air carriers, including the commenter, disclose applicable policies on their Web sites regarding the availability and use of on board electrical outlets for electronic devices intended for use during flight. The FAA encourages air carriers to continue this practice.

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[17] Voluntary Disclosure Reporting Program (VDRP), Service Difficulty Reporting System (SDRS), National Transportation Safety Board Aviation Accident and Incident Data Systems (NTSB), National Aeronautics and Space Administration Aviation Safety Reporting System (ASRS) and FAA Accident/Incident Data System (AIDS).

Additionally, as noted in the Delta Air Lines comment, existing DOT regulations (14 CFR part 382) permit carriers to require an individual traveling with a POC to bring an adequate number of fully charged batteries into the cabin that will power the POC for no less than 150% of the expected maximum flight duration. *See current* 14 CFR 382.133(f)(2), revised by this rule to 14 CFR 382.133(h)(2). Part 382 also requires carriers to inform passengers who advise the carriers of their intent to use a POC on board an aircraft about the maximum duration of the flight segment. *See* 14 CFR 382.133(f)(1), revised by this rule to 14 CFR 382.133(h)(1).

OTG commented that it is almost impossible for the average passenger to assess the amount of battery power that they may need for the duration of a trip due to time zone changes, the effect of flow rate on battery duration and mistaken assumptions about their ability to recharge batteries between flights. OTG also indicated that POC manufacturer manuals are "overly optimistic" about battery duration, often basing their assumptions on data from new batteries.

The Mayo Clinic commented that many passengers only use a POC temporarily, during a flight, and thus are unfamiliar with the device. The Mayo Clinic added that an FAA requirement for passengers using a POC to carry a certain amount of battery power, would serve as a reminder for the passenger and his or her health care provider regarding the necessity of sufficient power for POC use, noting that the consequences of inadequate supplemental oxygen could result in the need to administer medical oxygen during the flight or divert the aircraft.

The FAA maintains that it is the passengers' responsibility to understand the performance of their POC and its battery life under varying conditions and ensure their POC will enable them to adhere to their physician's instructions. All manuals for the POCs identified in SFAR No. 106 have liter flow and battery duration charts to help users make informed decisions regarding the number of spare batteries they need to bring to power the device and it is the responsibility of passengers using a POC during air travel to be familiar with the manual and consult their physician and POC provider as necessary. As highlighted by OTG, passengers may also want to consider the age of the device and the batteries as they assess the batteries required to power the POC for the amount of time required. The intent of the SFAR and this rulemaking is to allow passengers needing oxygen therapy during a flight to have ready access to a device that can supply that therapy, not to oversee passenger medical care.

Thus, as proposed, the FAA has eliminated the SFAR requirement to carry a certain amount of battery power. However, the Department continues to allow airlines to require individuals using POCs inflight to bring an adequate number of fully charged batteries based on the battery manufacturer's estimate of the hours of battery life while the POC is in use and the maximum duration of the flight. Also, to facilitate a passenger's ability to prepare for POC use during a flight, in AC 120–95B, published with this final rule, the FAA has provided references to the DOT requirements regarding the carriage of spare batteries. The FAA also expects to update its Web site with information a passenger may want to consider when traveling with a POC.

I. Miscellaneous

BPR Medical Limited recommended that the six continuous flow POCs approved under SFAR No. 106 should be retrofitted with an accessory to stop the flow of oxygen in the event that the POC tubing ignites. BPR states that during testing for fire propagation in tubing, BPR found that where a pulse dose mechanism provides oxygen, a fire that has developed will automatically be extinguished and will not propagate along the tubing to the oxygen source. The commenter added that while having a means to stop the flow of oxygen may be more of a concern where cigarettes might be a source of ignition, there are other possible sources of ignition on aircraft such as electro-static discharge from blankets.

FDA has recently recognized a POC performance standard (ISO 80601–2–69:2014) that includes a clause stating that the device shall be equipped with a means to stop the flow of gas towards the patient in the case that the accessory (tubing) becomes ignited. This standard will be considered as the FDA approves or clears new POC models.

Additionally, the previous FDA recognized performance standard for POCs (ISO 8359:1996 including Amendment 1 (2012)) stated that POCs shall include a means to prevent the propagation of fire back through the oxygen concentrator outlet in the case that the tubing ignites. Although it is not clear whether all of the continuous flow devices approved under the SFAR include this means to prevent fire propagation, the FDA is allowing continued use of these devices and is not requiring existing POCs to be modified to comply with the performance standard the agency currently recognizes (ISO 80601–2–69:2014).

Nevertheless, the commenter's suggestion to retrofit continuous flow POCs with an accessory to extinguish fire propagation in tubing is outside of the scope of the proposal and a prohibition on the use of continuous flow POCs on aircraft is not supported by aviation safety data. As previously noted, the FAA reviewed data from VDRP, SDRS, NTSB, ASRS and AIDS, and has not found any instances of POC malfunction during flight since the agency first published the SFAR.

The FAA also researched the service difficulty report (SDR) database for the period beginning the time SFAR No. 106 published (July 12, 2005) through December 2014, and ran multiple queries for the terms fires, blankets, POCs, electrostatic discharges, and insulation materials. This research covers a period where almost 78 million U.S. domestic flights occurred, revealing no SDRs related to POCs. *See http://www.transtats.bts.gov/Data_Elements.aspx?Data=2.*

Finally, although the FAA has not identified a single instance of a fire due to passenger's use of a POC on an aircraft, passenger-carrying aircraft are equipped with effective mitigation (*i.e.*, fire resistant cabin materials and fire extinguishers) if a fire should occur. *See* 14 CFR 25.853, 23.853, 121.215, 121.309, 125.113 and 135.155.

Accordingly, the agency has determined that no aviation safety data exists that would support further FAA action to preclude continuous flow POC models from use onboard aircraft.

J. Technical Amendments

This final rule makes two technical amendments. First, it updates a cross reference to the HMR that appears in §§ 121.574(a)(3), 125.219(a)(3), and 135.91(a)(3) and pertains to the definition of a compressed gas. Second, it removes the OMB Control No. 2120–0702 from § 11.201(b) because the information collection burdens associated with this control number cease to be effective when SFAR No. 106 is removed from title 14.

K. Nondiscrimination on the Basis of Disability in Air Travel

The Air Carrier Access Act (ACAA) prohibits discrimination by U.S. and foreign carriers against passengers with disabilities. *See* 49 U.S.C. 41705. Part 382 of title 14 contains detailed standards and requirements to implement the ACAA and to ensure that carriers provide nondiscriminatory service to passengers with disabilities.

With regard to POCs, part 382 establishes a framework to ensure accessibility for passengers using POCs and other respiratory assistive devices on aircraft, subject to applicable aviation safety, security, and hazardous materials regulations. In this final rule, the FAA revises its acceptance criteria on POCs, based on which air carriers may choose to, but are not required to, accept those POCs meeting FAA's criteria. On the other hand, part 382 mandates that carriers must accept POCs if they meet the FAA's acceptance criteria. Accordingly, this final rule includes amendments to 14 CFR part 382 to remove the references to SFAR No. 106, to ensure that the requirements of part 382 are consistent with the new acceptance criteria and labeling requirements set forth by the FAA in this rule, and to ensure the continued use of the POCs previously approved under SFAR No. 106, as permitted by the FAA.

When amending regulations, the Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking and give interested persons an opportunity to comment. However, the APA authorizes agencies to dispense with notice and comment if the agency finds for good cause that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B). "Good cause" exists in situations in which notice unavoidably prevents the due and required execution of agency functions or when an agency finds that due and timely execution of its functions is impeded by the notice otherwise required by the APA.

In this case, the agency finds that there is good cause to conclude that providing notice and public comment for the Department's conforming amendments is unnecessary, impracticable and contrary to the public interest. Notice and public comment are impracticable because they would cause undue delay. Providing additional notice and comment would be impracticable and contrary to the public interest because during the delay caused by providing notice and public comment, the Department's disability regulations would be inconsistent with FAA regulations. This could potentially cause confusion and affect disabled individuals' ability to bring necessary medical devices on flights.

Notice and comment on these conforming amendments is also unnecessary because the public has already had an opportunity to comment on the substantive issues addressed by this rulemaking. The Department is making minor amendments to part 382 that simply conform the Department's disability regulations to the FAA's safety regulations. The Department does not believe that it would receive new substantive comments, in addition to those already received and addressed in this document, if it sought comment on the conforming amendments. For these reasons the Department has determined that the notice and comment rulemaking process is unnecessary, impracticable, and contrary to the public interest for these conforming amendments.

1. Mandatory Acceptance of POCs That Meet FAA Acceptance Criteria

In 2008, DOT amended part 382 to include a provision requiring covered carriers to permit a passenger with a disability to use an SFAR-approved POC on all covered flights. More specifically, part 382 requires U.S. carriers to permit an individual with a disability to use an SFAR-approved POC, a ventilator, a respirator, or a continuous positive airway pressure machine (CPAP machine) on all flights unless the device does not meet applicable FAA requirements for medical portable electronic devices and does not display a manufacturer's label that indicates the device meets those FAA requirements. *See* 14 CFR 382.133(a). Foreign carriers must permit individuals with a disability to use a POC of a kind equivalent to a SFAR- approved POC, a ventilator, a respirator, or a CPAP machine for use on U.S. carriers in the passenger cabin on all covered flights unless the device does not meet the requirements for medical portable electronic devices set by the foreign carrier's government if such requirements exist and/or the POC does not display a manufacturer's label that indicates the device meets those requirements. *See* 14 CFR 382.133(b).

In 2009, because the SFAR-approved POCs were not required to have labels under the FAA's regulations, DOT issued guidance encouraging carriers to allow passengers to use these approved POCs even if the device had not been labeled, although carriers were not legally obligated to do so.[18] Since then, airlines have largely implemented a policy to allow passengers to use SFAR-approved POCs even if they do not have labels.

In this final rule, the Department is amending its disability regulation to ensure that, consistent with the FAA's actions in this rule, passengers with SFAR-approved POCs continue to be permitted to use these devices on aircraft, regardless of whether they are labeled, and that passengers with other POCs that satisfy the FAA acceptance criteria and labeling requirements will be able to use those POCs on their flights. As the FAA's regulations are enabling rules, these changes in the Department's disability regulation require carriers covered by part 382 to accept these POCs for air travel.

2. Other Amendments to 14 CFR Part 382

The Department is revising § 382.133(c)(3) (redesignated as § 382.133(e)(3)) by eliminating the reference to SFAR No. 106 with respect to the packaging and protection of spare batteries carried in an aircraft cabin, as this final rule removes the SFAR from the CFR. Instead, the Department is referring directly to the applicable PHMSA requirements.

The Department is also revising § 382.133(c)(6) (redesignated as § 382.133(e)(6) in this final rule) by eliminating the reference to federal aviation regulations with respect to the physicians statement, as in this final rule the FAA eliminates the SFAR No. 106 requirement for a physician's statement. The Department, however, is retaining the reference to § 382.23(b)(1)(ii) that permits carriers to require a medical certificate from passengers who need medical oxygen during a flight. In that regard, there is also no change to our rules that permit a U.S. carrier or a foreign carrier to ensure that the passengers traveling with POCs have sufficient numbers of spare batteries to power the POC for up to 150% of the maximum flight duration.

V. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

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[18] *See, Notice—The Use of Passenger-supplied Electronic Respiratory Assistive Devices on Aircraft, October 28, 2009, https://www.transportation.gov/sites/dot.gov/files/docs/Notice_10_28_09.pdf.*

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rule

The total cost savings from this final rule is $39.5 million ($27.6 million at 7% present value and $33.6 million at 3% present value). The largest cost savings of $39 million occurs from the reduction of crew time to review the physician's statement.

The FAA estimated that POC manufacturers that are expected to market POCs for use on aircraft will save a total of $108,000 over the ten year analysis period because the FAA will no longer require POC models to be identified in SFAR No. 106 prior to their use on aircraft. As a result of this action, POC manufacturers will no longer incur the administrative costs of petitioning the FAA which the FAA estimated would be $108,000. Further, because the manufacturer will no longer have to await resolution of that petition in order for a POC to be permitted for use on aircraft they will be able to introduce these devices sooner to the market.

The FAA estimates that the cost of this final rule will be a one-time total cost of $22,000 incurred by all those POC manufacturers who comply with this final rule to modify a label and the associated costs that manufacturers will incur to change their current labeling process to affix a label with the language on the devices.

Assumptions:

- Present Value Discount rates—7% and 3%
- Period of Analysis—ten years
- 24 new POCs over ten years

Entities Potentially Affected by This Rule:

- POC manufacturers
- Passengers carrying POCs on board aircraft
- Physicians providing written statements to POC users
- Aircraft operators (including crewmembers)

Benefits of this Rule

The replacement of the SFAR No. 106 device approval process with a process by which POC manufacturers label those devices that satisfy FAA acceptance criteria, will shorten the time for manufacturers to begin selling new POC models that can be used on aircraft. Therefore, one benefit of this rule will be to eliminate delays and enable manufacturers to bring their devices to market sooner. Further the FAA estimates total industry cost savings of $108,000 because manufacturers will no longer incur the administrative costs of petitioning the FAA for each new device. These cost savings easily exceed the labeling costs.

Furthermore, this final rule will result in cost savings because POC-using passengers will no longer have to obtain a physician's written statement as a prerequisite to bringing POCs on board aircraft in parts 121, 125, and 135 operations.

The largest cost-savings will accrue to airline crews as there will no longer be a requirement for the crew to review the contents of the physician's statement and to notify the pilot in command about the contents of the physician's statement and the intention of the passenger to use the POC on board.

The quantified cost savings of this final rule are summarized in table 4.

TABLE 4—TOTAL ESTIMATED COST SAVINGS FROM FINAL RULE

	Cost savings	7% present value savings	3% present value savings
FAA Savings—No SFAR	$91,644	$68,871	$80,519
Manufacturer Savings—No petition for rulemaking	108,000	75,853	92,126
Removal of FAA requirement for user to obtain a physician's statement for POC use on aircraft	569,961	401,645	486,914
Removal of FAA requirement for crew review of physician's statement and PIC notification	38,726,085	27,083,677	32,972,652
Total Cost Savings	$39,495,690	$27,630,045	$33,632,212

The FAA also identified another benefit that it did not quantify. This benefit comes from the use of a performance-based RF emissions acceptance criterion. Currently the manufacturers provide radiated RF emissions tests results showing that the device does not exceed thresholds established in Section 21 Category M of RTCA DO–160 to the FAA which posts these results on its Web site for aircraft operators to access. This final rule will include a performance-based RF emissions acceptance criterion that allows POC manufacturers to determine how to assess whether their POC meets the RF emissions limits for use on aircraft before they affix a label to the device confirming that this criterion has been satisfied. This might save manufacturers some cost if they can demonstrate in a less expensive way that their device meets the RF emissions criteria and will not degrade safety as the alternative method is an equivalent level of safety to the RTCA standard.

Costs of This Rule

As estimated in the NPRM, the FAA expects that POC manufacturers will incur costs of $22,000 to modify labels that they already affix to the POC, to contain the language required by this rule.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule is expected to reduce SFAR No. 106 requirements that currently result in a burden on POC manufacturers who produce POC devices for use on aircraft. This final rule will also result in small costs to manufacturers by requiring POCs intended for use on aircraft to bear a label indicating the device meets FAA requirements for use on board aircraft. The FAA learned from five of the small POC manufacturers that they might incur a one-time cost ranging from $200 to $1,500 which averages $0.20 to $1 per label.[19] These costs will be offset by cost savings because manufacturers will no longer have to petition for rulemaking and lose marketing time awaiting a final regulatory action. One manufacturer stated these cost savings are worth $4,500 for each petition.

The FAA identified nine companies that produce POCs intended for use on board aircraft. The FAA determined that the appropriate North American Industry Classification System (NAICS) codes of these manufacturers are 339112 and 339113 and the threshold for determining whether a company is a small business is 500 employees for those industries. Through online research, the FAA found data[20] indicating that six of the nine manufacturers are small entities and concluded that a substantial number of manufacturers are small entities. However, the FAA does not expect the rule to impose a significant economic impact on any of these small entities because the estimated cost savings of no longer having to petition the FAA (estimated at $4,500 per manufacturer) exceed the estimated costs of modifying the label (estimated at $2,400 per manufacturer) to comply with this final rule. Also, there is a benefit to POC manufacturers, in that the manufacturers will receive revenue sooner because they will be able to market new portable oxygen concentrators sooner.

Although a substantial number of operators conducting parts 121, 125 and 135 operations are small entities, all parts 121, 125 and 135 operators are expected to experience cost savings because the proposal will no longer require the PIC to be apprised when a passenger brings and intends to use a POC on board the aircraft and be informed on the contents of the physician's statement as does SFAR No. 106. The FAA did not receive comments on the initial regulatory flexibility analysis where we first discussed these cost savings. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and therefore no effect on international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $155.0 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. Annex 18 to the Convention on International Civil Aviation requires that dangerous goods are carried in accordance with the ICAO Technical Instructions on the Transport of Dangerous Goods by Air. The ICAO Technical Instructions do not contain specific provisions for POCs but Part 8 of the ICAO Technical Instructions (passenger and crew exceptions) allows for their carriage on board aircraft as portable medical electronic devices subject to certain conditions. Although the format is different, the conditions in

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[19] A sixth manufacturer that was contacted estimated costs of $10,200, but this manufacturer is not a small business.

[20] *http://www.manta.com/.*

Part 8 pertaining to batteries used to power POCs are the same as the allowances given in 49 CFR 175.10(a)(18).

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6 and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VII. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet —

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Access the Government Publishing Office's Web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 11

Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety.

14 CFR Part 382

Air Carriers, Consumer protection, Individuals with disabilities.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration and the Office of the Secretary amend chapters I and II of title 14, Code of Federal Regulations as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701.

■ 2. Amend § 1.1 by adding a definition for "portable oxygen concentrator" in alphabetical order to read as follows:

§ 1.1 General definitions.

* * * * *

Portable oxygen concentrator means a medical device that separates oxygen from other gasses in ambient air and dispenses this concentrated oxygen to the user.

* * * * *

■ 3. Amend § 1.2 by adding the abbreviation "POC" in alphabetical order to read as follows:

§ 1.2 Abbreviations

* * * * *

POC means portable oxygen concentrator.

* * * * *

PART 11—GENERAL RULEMAKING PROCEDURES

■ 4. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

■ 5. In § 11.201, amend the table in paragraph (b) by revising the entry for part 121 to read as follows:

§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

* * * * *

(b) * * *

14 CFR part or section identified and described	Current OMB control No.
* * * *	* * *
Part 121	2120–0008, 2120–0028, 2120–0535, 2120–0571, 2120–0600, 2120–0606, 2120–0614, 2120–0616, 2120–0631, 2120–0651, 2120–0653, 2120–0691, 2120–0739, 2120–0760, 2120–0766.
* * * *	* * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 6. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Public Law 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732, 46105; Public Law 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Public Law 112–95, 126 Stat. 62 (49 U.S.C. 44732 note).

Special Federal Aviation Regulation No. 106 [Removed]

■ 7. Remove Special Federal Aviation Regulation No. 106.

■ 8. Amend § 121.306 as follows:

■ a. In paragraph (b)(4), remove "or" following the semicolon;

■ b. Redesignate paragraph (b)(5) as paragraph (b)(6);

■ c. Add new paragraph (b)(5); and

■ d. In paragraph (c), remove the reference "(b)(5)" and add in its place "(b)(6)".

The addition reads as follows:

§ 121.306 Portable electronic devices.

* * * * *

(b) * * *

(5) Portable oxygen concentrators that comply with the requirements in § 121.574; or

* * * * *

■ 9. Amend § 121.574 as follows:

■ a. Revise the section heading;

■ b. Revise paragraph (a) introductory text;

■ c. In paragraph (a)(3), remove the reference "49 CFR 173.300(a)" and add in its place "49 CFR 173.115(b)";

■ d. Revise paragraph (b); and

■ e. Add paragraph (e).

The revisions and addition read as follows:

§ 121.574 Oxygen and portable oxygen concentrators for medical use by passengers.

(a) A certificate holder may allow a passenger to carry and operate equipment for the storage, generation, or dispensing of oxygen when all of the conditions in paragraphs (a) through (d) of this section are satisfied. Beginning August 22, 2016, a certificate holder may allow a passenger to carry and operate a portable oxygen concentrator when the conditions in paragraphs (b) and (e) of this section are satisfied.

* * * * *

(b) No person may smoke or create an open flame and no certificate holder may allow any person to smoke or create an open flame within 10 feet of oxygen storage and dispensing equipment carried in accordance with paragraph (a) of this section or a portable oxygen concentrator carried and operated in accordance with paragraph (e) of this section.

* * * * *

(e) *Portable oxygen concentrators*—(1) *Acceptance criteria.* A passenger may carry or operate a portable oxygen concentrator for personal use on board an aircraft and a certificate holder may allow a passenger to carry or operate a portable oxygen concentrator on board an aircraft operated under this part during all phases of flight if the portable oxygen concentrator satisfies all of the requirements in this paragraph (e):

(i) Is legally marketed in the United States in accordance with Food and Drug Administration requirements in title 21 of the CFR;

(ii) Does not radiate radio frequency emissions that interfere with aircraft systems;

(iii) Generates a maximum oxygen pressure of less than 200 kPa gauge (29.0 psig/43.8 psia) at 20 °C (68 °F);

(iv) Does not contain any hazardous materials subject to the Hazardous Materials Regulations (49 CFR parts 171 through 180) except as provided in 49 CFR 175.10 for batteries used to power portable electronic devices and that do not require aircraft operator approval; and

(v) Bears a label on the exterior of the device applied in a manner that ensures the label will remain affixed for the life of the device and containing the following certification statement in red lettering: "The manufacturer of this POC has determined this device conforms to all applicable FAA acceptance criteria for POC carriage and use on board aircraft." The label requirements in this paragraph (e)(1)(v) do not apply to the following portable oxygen concentrators approved by the FAA for use on board aircraft prior to May 24, 2016:

(A) AirSep Focus;

(B) AirSep FreeStyle;

(C) AirSep FreeStyle 5;

(D) AirSep LifeStyle;

(E) Delphi RS–00400;

(F) DeVilbiss Healthcare iGo;

(G) Inogen One;

(H) Inogen One G2;

(I) Inogen One G3;

(J) Inova Labs LifeChoice;

(K) Inova Labs LifeChoice Activox;

(L) International Biophysics LifeChoice;

(M) Invacare Solo2;

(N) Invacare XPO2;

(O) Oxlife Independence Oxygen Concentrator;

(P) Oxus RS–00400;

(Q) Precision Medical EasyPulse;

(R) Respironics EverGo;

(S) Respironics SimplyGo;

(T) SeQual Eclipse;

(U) SeQual eQuinox Oxygen System (model 4000);

(V) SeQual Oxywell Oxygen System (model 4000);

(W) SeQual SAROS; and

(X) VBox Trooper Oxygen Concentrator.

(2) *Operating requirements.* Portable oxygen concentrators that satisfy the acceptance criteria identified in paragraph (e)(1) of this section may be carried or operated by a passenger on an aircraft provided the aircraft operator ensures that all of the conditions in this paragraph (e)(2) are satisfied:

(i) *Exit seats.* No person operating a portable oxygen concentrator is permitted to occupy an exit seat.

(ii) *Stowage of device.* During movement on the surface, takeoff and landing, the device must be stowed under the seat in front of the user, or in another approved stowage location so that it does not block the aisle way or the entryway to the row. If the device is to be operated by the user, it must be operated only at a seat location that does not restrict any passenger's access to, or use of, any required emergency or regular exit, or the aisle(s) in the passenger compartment.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 10. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

Special Federal Aviation Regulation No. 106 [Removed]

■ 11. Remove Special Federal Aviation Regulation No. 106.

■ 12. Amend § 125.204 as follows:

■ a. In paragraph (b)(4), remove "or" following the semicolon;

■ b. Redesignate paragraph (b)(5) as paragraph (b)(6);

■ c. Add new paragraph (b)(5); and

■ d. In paragraph (c), remove the reference "(b)(5)" and add in its place "(b)(6)".

The addition reads as follows:

§ 125.204 Portable electronic devices.

* * * * *

(b) * * *

(5) Portable oxygen concentrators that comply with the requirements in § 125.219; or

* * * * *

■ 13. Amend § 125.219 as follows:
■ a. Revise the section heading;
■ b. Revise paragraph (a) introductory text;
■ c. In paragraph (a)(1)(iii), after the semicolon, remove "and";
■ d. Redesignate paragraph (a)(1)(iv) as paragraph (a)(1)(v);
■ e. Add new paragraph (a)(1)(iv);
■ f. In paragraph (a)(3), remove the reference "title 49 CFR 173.300(a)" and add in its place "49 CFR 173.115(b)";
■ g. Revise paragraph (b); and
■ h. Add paragraph (f).

The revisions and additions read as follows:

§ 125.219 Oxygen and portable oxygen concentrators for medical use by passengers.

(a) Except as provided in paragraphs (d) and (f) of this section, no certificate holder may allow the carriage or operation of equipment for the storage, generation or dispensing of medical oxygen unless the conditions in paragraphs (a) through (c) of this section are satisfied. Beginning August 22, 2016, a certificate holder may allow a passenger to carry and operate a portable oxygen concentrator when the conditions in paragraphs (b) and (f) of this section are satisfied.

(1) * * *

(iv) Constructed so that all valves, fittings, and gauges are protected from damage during that carriage or operation; and

* * * * *

(b) No person may smoke or create an open flame and no certificate holder may allow any person to smoke or create an open flame within 10 feet of oxygen storage and dispensing equipment carried under paragraph (a) of this section or a portable oxygen concentrator carried and operated under paragraph (f) of this section.

* * * * *

(f) *Portable oxygen concentrators*—(1) *Acceptance criteria.* A passenger may carry or operate a portable oxygen concentrator for personal use on board an aircraft and a certificate holder may allow a passenger to carry or operate a portable oxygen concentrator on board an aircraft operated under this part during all phases of flight if the portable oxygen concentrator satisfies all of the requirements in this paragraph (f):

(i) Is legally marketed in the United States in accordance with Food and Drug Administration requirements in title 21 of the CFR;

(ii) Does not radiate radio frequency emissions that interfere with aircraft systems;

(iii) Generates a maximum oxygen pressure of less than 200 kPa gauge (29.0 psig/43.8 psia) at 20 °C (68 °F);

(iv) Does not contain any hazardous materials subject to the Hazardous Materials Regulations (49 CFR parts 171 through 180) except as provided in 49 CFR 175.10 for batteries used to power portable electronic devices and that do not require aircraft operator approval; and

(v) Bears a label on the exterior of the device applied in a manner that ensures the label will remain affixed for the life of the device and containing the following certification statement in red lettering: "The manufacturer of this POC has determined this device conforms to all applicable FAA acceptance criteria for POC carriage and use on board aircraft." The label requirements in this paragraph (f)(1)(v) do not apply to the following portable oxygen concentrators approved by the FAA for use on board aircraft prior to May 24, 2016:

(A) AirSep Focus;
(B) AirSep FreeStyle;
(C) AirSep FreeStyle 5;
(D) AirSep LifeStyle;
(E) Delphi RS–00400;
(F) DeVilbiss Healthcare iGo;
(G) Inogen One;
(H) Inogen One G2;
(I) Inogen One G3;
(J) Inova Labs LifeChoice;
(K) Inova Labs LifeChoice Activox;
(L) International Biophysics LifeChoice;
(M) Invacare Solo2;
(N) Invacare XPO2;
(O) Oxlife Independence Oxygen Concentrator;
(P) Oxus RS–00400;
(Q) Precision Medical EasyPulse;
(R) Respironics EverGo;
(S) Respironics SimplyGo;
(T) SeQual Eclipse;
(U) SeQual eQuinox Oxygen System (model 4000);
(V) SeQual Oxywell Oxygen System (model 4000);
(W) SeQual SAROS; and
(X) VBox Trooper Oxygen Concentrator.

(2) *Operating requirements.* Portable oxygen concentrators that satisfy the acceptance criteria identified in paragraph (f)(1) of this section may be carried or used by a passenger on an aircraft provided the aircraft operator ensures that all of the conditions in this paragraph (f)(2) are satisfied:

(i) *Exit seats.* No person operating a portable oxygen concentrator is permitted to occupy an exit seat.

(ii) *Stowage of device.* During movement on the surface, takeoff and landing, the device must be stowed under the seat in front of the user, or in another approved stowage location so that it does not block the aisle way or the entryway to the row. If the device is to be operated by the user, it must be operated only at a seat location that does not restrict any passenger's access to, or use of, any required emergency or regular exit, or the aisle(s) in the passenger compartment.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 14. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Public Law 112–95, 126 Stat. 58 (49 U.S.C. 44730).

Special Federal Aviation Regulation No. 106 [Removed]

■ 15. Remove Special Federal Aviation Regulation No. 106.

■ 16. Amend § 135.91 as follows:
■ a. Revise the section heading and paragraph (a) introductory text;
■ b. In paragraph (a)(1)(iii), after the semicolon, remove "and";
■ c. Redesignate paragraph (a)(1)(iv) as paragraph (a)(1)(v);
■ d. Add new paragraph (a)(1)(iv);
■ e. In paragraph (a)(3), remove the reference "title 49 CFR 173.300(a)" and add in its place "49 CFR 173.115(b)";
■ f. Revise paragraph (b); and
■ g. Add paragraph (f).

The revisions and additions read as follows:

§ 135.91 Oxygen and portable oxygen concentrators for medical use by passengers.

(a) Except as provided in paragraphs (d) and (e) of this section, no certificate holder may allow the carriage or operation of equipment for the storage, generation or dispensing of medical oxygen unless the conditions in paragraphs (a) through (c) of this section are satisfied. Beginning August 22, 2016, a certificate holder may allow a passenger to carry and operate a portable oxygen concentrator when the conditions in paragraphs (b) and (f) of this section are satisfied.

(1) * * *

(iv) Constructed so that all valves, fittings, and gauges are protected from damage during carriage or operation; and

* * * * *

(b) No person may smoke or create an open flame and no certificate holder may allow any person to smoke or create an open flame within 10 feet of oxygen storage and dispensing equipment carried under paragraph (a) of this section or a portable oxygen concentrator carried and operated under paragraph (f) of this section.

* * * * *

(f) *Portable oxygen concentrators*—(1) *Acceptance criteria.* A passenger may carry or operate a portable oxygen concentrator for personal use on board an aircraft and a certificate holder may allow a passenger to carry or operate a portable oxygen concentrator on board an aircraft operated under this part during all phases of flight if the portable oxygen concentrator satisfies all of the requirements of this paragraph (f):

(i) Is legally marketed in the United States in accordance with Food and Drug Administration requirements in title 21 of the CFR;

(ii) Does not radiate radio frequency emissions that interfere with aircraft systems;

(iii) Generates a maximum oxygen pressure of less than 200 kPa gauge (29.0 psig/43.8 psia) at 20 °C (68 °F);

(iv) Does not contain any hazardous materials subject to the Hazardous Materials Regulations (49 CFR parts 171 through 180) except as provided in 49 CFR 175.10 for batteries used to power portable electronic devices and that do not require aircraft operator approval; and

(v) Bears a label on the exterior of the device applied in a manner that ensures the label will remain affixed for the life of the device and containing the following certification statement in red lettering: "The manufacturer of this POC has determined this device conforms to all applicable FAA acceptance criteria for POC carriage and use on board aircraft." The label requirements in this paragraph (f)(1)(v) do not apply to the following portable oxygen concentrators approved by the FAA for use on board aircraft prior to May 24, 2016:

(A) AirSep Focus;

(B) AirSep FreeStyle;

(C) AirSep FreeStyle 5;

(D) AirSep LifeStyle;

(E) Delphi RS–00400;

(F) DeVilbiss Healthcare iGo;

(G) Inogen One;

(H) Inogen One G2;

(I) Inogen One G3;

(J) Inova Labs LifeChoice;

(K) Inova Labs LifeChoice Activox;

(L) International Biophysics LifeChoice;

(M) Invacare Solo2;

(N) Invacare XPO2;

(O) Oxlife Independence Oxygen Concentrator;

(P) Oxus RS–00400;

(Q) Precision Medical EasyPulse;

(R) Respironics EverGo;

(S) Respironics SimplyGo;

(T) SeQual Eclipse;

(U) SeQual eQuinox Oxygen System (model 4000);

(V) SeQual Oxywell Oxygen System (model 4000);

(W) SeQual SAROS; and

(X) VBox Trooper Oxygen Concentrator.

(2) *Operating requirements.* Portable oxygen concentrators that satisfy the acceptance criteria identified in paragraph (f)(1) of this section may be carried on or operated by a passenger on board an aircraft provided the aircraft operator ensures that all of the conditions in this paragraph (f)(2) are satisfied:

(i) *Exit seats.* No person operating a portable oxygen concentrator is permitted to occupy an exit seat.

(ii) *Stowage of device.* During movement on the surface, takeoff and landing, the device must be stowed under the seat in front of the user, or in another approved stowage location so that it does not block the aisle way or the entryway to the row. If the device is to be operated by the user, it must be operated only at a seat location that does not restrict any passenger's access to, or use of, any required emergency or regular exit, or the aisle(s) in the passenger compartment.

■ 17. Amend § 135.144 as follows:

■ a. In paragraph (a) introductory text, remove "of the following";

■ b. In paragraph (b)(4), remove "or" following the semicolon;

■ c. Redesignate paragraph (b)(5) as paragraph (b)(6);

■ d. Add new paragraph (b)(5); and

■ e. In paragraph (c), remove the reference "(b)(5)" and add in its place "(b)(6)".

The addition reads as follows:

§ 135.144 Portable electronic devices.

* * * * *

(b) * * *

(5) Portable oxygen concentrators that comply with the requirements in § 135.91; or

* * * * *

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

■ 18. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 41705.

■ 19. In § 382.27, revise paragraph (a) to read as follows:

§ 382.27 May a carrier require a passenger with a disability to provide advance notice in order to obtain certain specific services in connection with a flight?

(a) Except as provided in paragraph (b) of this section and § 382.133(e)(4) and (5) and (f)(5) and (6), as a carrier you must not require a passenger with a disability to provide advance notice in order to obtain services or accommodations required by this part.

* * * * *

■ 20. Revise § 382.133 to read as follows:

§ 382.133 What are the requirements concerning the evaluation and use of passenger-supplied electronic devices that assist passengers with respiration in the cabin during flight?

(a) Except for on-demand air taxi operators, as a U.S. carrier conducting passenger service you must permit any individual with a disability to use in the passenger cabin during air transportation an electronic assistive device specified in paragraph (c) of this section on all aircraft originally designed to have a maximum passenger capacity of more than 19 seats unless:

(1) The device does not meet applicable FAA requirements for medical portable electronic device; or

(2) The device cannot be stowed and used in the passenger cabin consistent with applicable TSA, FAA, and PHMSA regulations.

(b) Except for foreign carriers conducting operations of a nature equivalent to on-demand air taxi operations by a U.S. carrier, as a foreign carrier conducting passenger service you must permit any individual with a disability to use in the passenger cabin during air transportation to, from or within the United States, an electronic assistive device specified in paragraph (d) of this section on all aircraft originally designed to have a maximum passenger capacity of more than 19 seats unless:

(1) The device does not meet requirements for medical portable electronic devices set by the foreign carrier's government if such requirements exist;

(2) The device does not meet requirements for medical portable electronic devices set by the FAA for U.S. carriers in circumstances where requirements for medical portable electronic devices have not been set by the foreign carrier's government and the foreign carrier elects to apply FAA requirements for medical portable electronic devices; or

(3) The device cannot be stowed and used in the passenger cabin consistent with applicable TSA, FAA and PHMSA

regulations, and the safety or security regulations of the foreign carrier's government.

(c) Except as provided in paragraph (a) of this section, as a covered U.S. air carrier, you must accept the passenger supplied electronic assistive device in this paragraph (c):

(1) A portable oxygen concentrator (POC), a ventilator, a respirator or a continuous positive airway pressure machine that displays a manufacturer's label that indicates the device meets FAA requirements; and

(2) The following POC models whether or not they are labeled:

(i) AirSep Focus;
(ii) AirSep FreeStyle;
(iii) AirSep FreeStyle 5;
(iv) AirSep LifeStyle;
(v) Delphi RS–00400;
(vi) DeVilbiss Healthcare iGo;
(vii) Inogen One;
(viii) Inogen One G2;
(ix) Inogen One G3;
(x) Inova Labs LifeChoice;
(xi) Inova Labs LifeChoice Activox;
(xii) International Biophysics LifeChoice;
(xiii) Invacare Solo2;
(xiv) Invacare XPO2;
(xv) Oxlife Independence Oxygen Concentrator;
(xvi) Oxus RS–00400;
(xvii) Precision Medical EasyPulse;
(xviii) Respironics EverGo;
(xix) Respironics SimplyGo;
(xx) SeQual Eclipse;
(xxi) SeQual eQuinox Oxygen System (model 4000);
(xxii) SeQual Oxywell Oxygen System (model 4000);
(xxiii) SeQual SAROS; and
(xxiv) VBox Trooper Oxygen Concentrator.

(d) Except as provided in paragraph (b) of this section, as a covered foreign air carrier, you must accept the supplied electronic assistive devices in this paragraph (d):

(1) A POC, a ventilator, a respirator or a continuous positive airway pressure machine that displays a manufacturer's label according to FAA requirements in circumstances where requirements for labeling these devices have not been set by the foreign carrier's government; and

(2) The following POC models whether or not they are labeled:

(i) AirSep Focus;
(ii) AirSep FreeStyle;
(iii) AirSep FreeStyle 5;
(iv) AirSep LifeStyle;
(v) Delphi RS–00400;
(vi) DeVilbiss Healthcare iGo;
(vii) Inogen One;
(viii) Inogen One G2;
(ix) Inogen One G3;
(x) Inova Labs LifeChoice;
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(xxi) SeQual eQuinox Oxygen System (model 4000);
(xxii) SeQual Oxywell Oxygen System (model 4000);
(xxiii) SeQual SAROS; and
(xxiv) VBox Trooper Oxygen Concentrator.

(e) As a U.S. carrier, you must provide information during the reservation process as indicated in paragraphs (e)(1) through (6) of this section upon inquiry from an individual concerning the use in the cabin during air transportation of a ventilator, respirator, continuous positive airway machine, or a POC. The information in this paragraph (e) must be provided:

(1) Any applicable requirement for a manufacturer-affixed label to reflect that the device has been tested to meet applicable FAA requirements for medical portable electronic devices;

(2) The maximum weight and dimensions (length, width, height) of the device to be used by an individual that can be accommodated in the aircraft cabin consistent with FAA safety requirements;

(3) The requirement to bring an adequate number of batteries as outlined in paragraph (h)(2) of this section and to ensure that extra batteries carried onboard to power the device are packaged and protected from short circuit and physical damage in accordance with applicable PHMSA regulations regarding spare batteries carried by passengers in an aircraft cabin;

(4) Any requirement, if applicable, that an individual contact the carrier operating the flight 48 hours before scheduled departure to learn the expected maximum duration of his/her flight in order to determine the required number of batteries for his/her particular ventilator, respirator, continuous positive airway pressure machine, or POC;

(5) Any requirement, if applicable, of the carrier operating the flight for an individual planning to use such a device to check-in up to one hour before that carrier's general check-in deadline; and

(6) For POCs, the requirement of § 382.23(b)(1)(ii) to present to the operating carrier at the airport a physician's statement (medical certificate).

(f) As a foreign carrier operating flights to, from or within the United States, you must provide the information during the reservation process as indicated in paragraphs (f)(1) through (7) of this section upon inquiry from an individual concerning the use in the cabin during air transportation on such a flight of a ventilator, respirator, continuous positive airway machine, or POC. The information in this paragraph (f) must be provided:

(1) Any applicable requirement for a manufacturer-affixed label to reflect that the device has been tested to meet requirements for medical portable electronic devices set by the foreign carrier's government if such requirements exist;

(2) Any applicable requirement for a manufacturer-affixed label to reflect that the device has been tested to meet requirements for medical portable electronic devices set by the FAA for U.S. carriers if requirements for medical portable electronic devices have not been set by the foreign carrier's government and the foreign carrier elects to apply FAA requirements for medical portable electronic devices;

(3) The maximum weight and dimensions (length, width, height) of the device to be used by an individual that can be accommodated in the aircraft cabin consistent with the safety regulations of the foreign carrier's government;

(4) The requirement to bring an adequate number of batteries as outlined in paragraph (h)(2) of this section and to ensure that extra batteries carried onboard to power the device are packaged in accordance with applicable government safety regulations;

(5) Any requirement, if applicable, that an individual contact the carrier operating the flight 48 hours before scheduled departure to learn the expected maximum duration of his/her flight in order to determine the required number of batteries for his/her particular ventilator, respirator, continuous positive airway pressure machine, or POC;

(6) Any requirement, if applicable, of the carrier operating the flight for an individual planning to use such a device to check-in up to one hour before that carrier's general check-in deadline; and

(7) Any requirement, if applicable, that an individual who wishes to use a POC onboard an aircraft present to the operating carrier at the airport a physician's statement (medical certificate).

(g) In the case of a codeshare itinerary, the carrier whose code is used on the flight must either inform the individual inquiring about using a ventilator, respirator, CPAP machine or POC onboard an aircraft to contact the carrier operating the flight for information about its requirements for use of such devices in the cabin, or provide such information on behalf of the codeshare carrier operating the flight.

(h)(1) As a U.S. or foreign carrier subject to paragraph (a) or (b) of this section, you must inform any individual who has advised you that he or she plans to operate his/her device in the aircraft cabin, within 48 hours of his/her making a reservation or 24 hours before the scheduled departure date of his/her flight, whichever date is earlier, of the expected maximum flight duration of each segment of his/her flight itinerary.

(2) You may require an individual to bring an adequate number of fully charged batteries onboard, based on the battery manufacturer's estimate of the hours of battery life while the device is in use and the information provided in the physician's statement, to power the device for not less than 150% of the expected maximum flight duration.

(3) If an individual does not comply with the conditions for acceptance of a medical portable electronic device as outlined in this section, you may deny boarding to the individual in accordance with § 382.19(c) and in that event you must provide a written explanation to the individual in accordance with § 382.19(d).

Issued under authority provided by 49 U.S.C. 106(f) and 44701(a), and authority provided by 49 U.S.C. 41705, delegated at 49 CFR 1.27, in Washington, DC, on May 11, 2016.

Kathryn B. Thomson,

General Counsel, Department of Transportation.

Michael P. Huerta,

Administrator, Federal Aviation Administration.

[FR Doc. 2016–11918 Filed 5–23–16; 8:45 am]

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